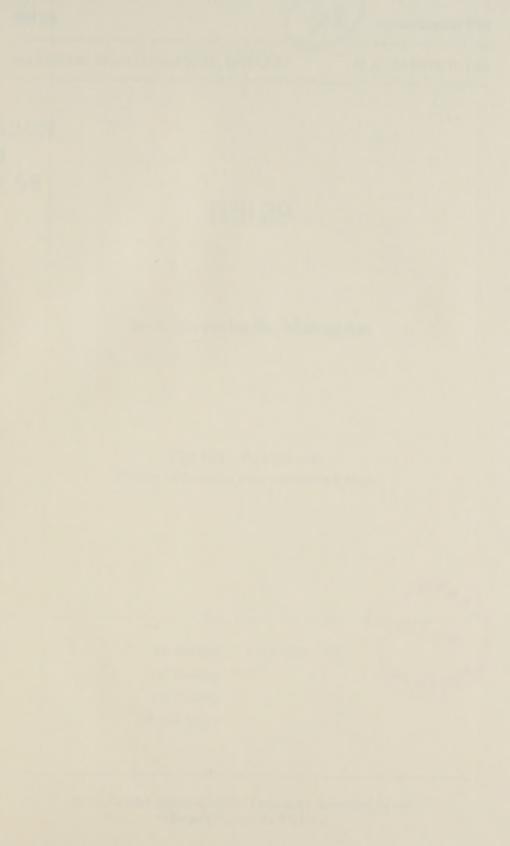


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2ND SESSION, 33RD LEGISLATURE, ONTARIO

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Bill29

An Act to revise the Mining Act

The Hon. R. Fontaine

Minister of Northern Development and Mines

1st Reading
2nd Reading

3rd Reading

Royal Assent



April 22nd, 1986

EXPLANATORY NOTES

The purpose of the Bill is to simplify, modernize and standardize the regulation of mineral exploration and development. Many of the changes are of an administrative nature and some of the detail contained in the current Act will be dealt with in the new regulations.

The major significant changes are as follows:

- 1. Provision is made for a lifetime prospector's licence with the elimination of annual renewals.
- 2. Perimeter staking of a block of claims is permitted to reduce cost of staking.
- 3. Assessment work requirements are expressed in terms of dollars spent rather than days worked.
- 4. Holders of mining claims doing exploratory work are required to furnish notice to occupants of surface rights of their intention to perform assessment work.
- 5. The option of continuing assessment work rather than applying for a lease is provided.
- 6. Mining recorders are given authority to extend time to perform assessment work and to relieve claims from forfeiture.
- 7. The potential hazard of inactive mines are recognized and measures are introduced to prevent injury.

Bill 29

1986

An Act to revise the Mining Act

CONTENTS

S			

- 1. Definitions
- 2. Purpose

PART I ADMINISTRATION AND RECORDS

- 3. Administration by Minister
- 4. Mining divisions
- 5. Appointment of recorder
- 6. Recording office
- 7. Inspector
- 8. Commissioners for affidavits
- 9. Employees of Ministry prohibited from staking, etc.
- 10. Evidence of records or documents
- 11. Filing constitutes notice
- 12. Instrument deemed to be recorded when filed
- 13. Priority of interest
- 14. Recording documents
- 15. Anniversary day unchanged
- 16. Writs of execution
- 17. Address for service
- 18. Correction of instrument
- 19. Time expiring on a Saturday
- 20. Power to extend time

PART II

PROSPECTING, STAKING AND RECORDING MINING CLAIMS

- 21. Prospector's licence required
- 22. Suspension of licence
- 23. Entering on land
- 24. Crown land eligible for prospecting
- 25. Crown land eligible for staking
- 26. Crop bearing land
- 27. Staking around exempt land
- 28. Where forfeiture, termination or surrender
- 29. Agricultural designation
- 30. Areas requiring protection
- 31. Townsites on unpatented claims

Section

- 32. Withdrawing or reopening land
 - 33. Size of mining claim
 - 34. Tags
- 35. Application to record staking
- 36. Substantial compliance
- 37. Recorder may order alterations
- 38. Improper description of area
- 39. Restricted travel zone
- 40. Where consent required to record
- 41. Time of recording claim
- 42. Recording in another name
- 43. Failure to file staking
- 44. Mining claim number
- 45. Death of staker or holder
- 46. Re-identification of boundary lines
- 47. Mining claim recorded in wrong division
- 48. Claim in more than one division
- 49. Invalid claims
- 50. Recording of disputes
- 51. Certificate of record
- 52. Certificate conclusive evidence
- 53. Free assays
- 54. Limited rights of claim holders
- 55. Right of access
- 56. Municipal tax exemption
- 57. Placer deposit
- 58. Permission to test minerals
- 59. Enforcing interest acquired prior to staking
- 60. Inspection by recorder
- 61. Improper use of land
- 62. Error by Ministry

PART III ASSESSMENT WORK

- 63. Assessment work-time period
- 64. Prospecting, geophysical and geochemical work
- 65. No assessment work prior to staking

Section

- 66. Right to do ground assessment work
- 67. Excess work
- 68. Work on adjoining claims
- 69. Work on leased or patented land70. Proportionate contribution of
- 70. Proportionate contribution of work
- 71. Default in payment for work
- 72. Report of technical assessment
- 73. Work prohibited by Forest Fire Prevention Act
- 74. Extension of time—late filing assessment work
- 75. Extension of time—illness
- 76. Certificate of performance of work

PART IV

ABANDONMENT, SURRENDER AND FORFEITURE OF MINING CLAIMS

- 77. Application to unpatented claims
- 78. Abandonment of claim
- 79. Forfeiture
- 80. Forfeiture for fraud, etc.
- 81. Cancelled claim
- 82. Relief from forfeiture
- 83. Order by recorder—re forfeiture
- 84. Order by Commissioner—re forfeiture

PART V

LEASES, LICENCES OF OCCUPATION AND EXPLORATORY LICENCES OF OCCUPATION

- 85. Right to lease of claim
- 86. Rental
- 87. Term of lease
- 88. Renewals
- 89. Reservations in lease
- 90. Survey
- 91. Where area not as prescribed
- 92. Fractions
- 93. Where area exceeds area prescribed
- 94. Summer resort parcel
- 95. Access granted by lease
- 96. Lease under previous Act
- 97. Lease of surface rights for tailings, etc.
- 98. Lease void where land used other than for mining purposes
- 99. Right to convert to patent
- 100. Exploratory licence of occupation

Section

- 101. Licence of occupation
- 102. Licences of occupation issued under previous Acts
- 103. Claim for rent payment by colessee or co-licensee
- 104. Special leases and patents
- 105. Reinstatement of lease

PART VI

SURFACE RIGHTS AND COMPENSATION FOR DAMAGE

- 106. Compensation for surface rights damage
- Claim holder—compensation for damage
- 108. Compensation
- 109. Right over other land conferred by Commissioner

PART VII QUARRY PERMITS

- 110. Quarry permit required
- 111. Permit issued by Minister
- 112. Classes of permits
- 113. Cancellation, etc., of permit
- 114. Immediate suspension of operations
- 115. Notice of decision
- 116. Right to continue operations
- 117. Royalty payment
- 118. Security as guarantee
- 119. Records
- 120. Returns
- 121. Right to stake claim

PART VIII

HEARINGS AND APPEALS

- 122. Recorder to decide matter in first instance
- 123. Appeal to Commissioner
- 124. Hearing by Commissioner
- 125. Interlocutory applications
- 126. Directions of Commissioner re proceedings
- 127. Expert assistance
- 128. Commissioner may call for evidence and view property
- 129. Disclosure of evidence to parties
- 130. Decision on the merits
- 131. Security for costs
- 132. Costs
- 133. Oral decisions
- 134. Orders to be written
- 135. Appeal to Divisional Court
- 136. Use of court rooms, etc.
- 137. Recording of evidence
- 138. Notice of interest
- 139. Notice of status in question

Section

- 140. Effect of notice
- 141. Order vacating

PART IX HAZARDOUS LANDS

- 142. Definitions
- 143. District mine inspector
- 144. Protective measures
- 145. Designation of inactive mine
- 146. Direction to take protective measures
- 147. Protective measures by Minister
- 148. Retaining protection
- 149. Certificate that requirements met
- 150. Designation as limited use land
- 151. Limited use land restrictions
- 152. Examination of documentary evidence
- 153. Designation not regulation under *Regulations Act*
- 154. Offence

PART X MINING LAND TAX

- 155. Definitions
- 156. Liability for tax
- 157. Exemptions from tax by Minister
- 158. Tax roll
- 159. Registration of notice of liability
- 160. Determining liability for tax
- 161. Penalty for default
- 162. Arrears under previous Act
- 163. Special lien and priority of the
- 164. Right of action for tax
- 165. Tax arrears
- 166. Declaration of forfeiture
- 167. Claim for tax payment by coowner

PART XI REFINERIES

- 168. Definitions
- 169. Refinery licence required
- 170. Issue of refinery licence
- 171. Reference to Commissioner for hearing and report
- 172. Use of refinery
- 173. Inquiry by Commissioner
- 174. Penalty

Section

PART XII GENERAL

- 175. Lien for wages
- 176. Corporate land forfeited to Crown
- 177. Lands and easements revert to Crown
- 178. Administration of reverted land or rights
- 179. Mineral rights under roads
- 180. Statistical returns
- 181. All minerals to be treated in Canada
- 182. Conditions under which trees may be cut
- 183. Right to remove property
- 184. Drill core and splits to be kept
- 185. Stabilization of tailings
- 186. Offences
- 187. Prosecutions
- 188. Regulations

PART XIII

SALT SOLUTION MINING AND STORAGE FACILITIES

- 189. Definitions
- 190. Permit required
- 191. Permit issued by Minister
- 192. Refusal to issue permit
- 193. Suspension or cancellation of permit
- 194. Immediate suspension of operations
- 195. Proposal to refuse, suspend or cancel
- 196. Permits subject to conditions
- 197. Security as guarantee
- 198. Rehabilitation by permit holder
- 199. Report of spills, leaks
- 200. Transfer

PART XIV TRANSITION

- 201. Prospector's licence
- 202. Tags
- 203. Assessment work credits
- 204. Previous orders
- 205. Extending time to apply for lease
- 206. Old leases transferrable
- 207. Repeal
- 208. Commencement
- 209. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

- "anniversary date", when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim or a merger under subsection 90 (4) or such other date as may result by the application of subsection 15 (2);
- "Commissioner" means the Mining and Lands Commissioner;
- "Crown" means the Crown in right of Ontario;
- "Crown land" means land, the surface rights, mining rights or the mining and surface rights of which are unpatented but does not include,
 - (a) land in the actual use or occupation of the Crown, the Crown in right of Canada or of a department of the Government of Canada or a ministry of the Government of Ontario,
 - (b) land the use of which is withdrawn or set apart or appropriated for a public purpose, or
 - (c) land held by a ministry of the Government of Ontario;
- "Director" means the Director of the Land Management Branch of the Ministry;
- "file" means the deposit and payment of any prescribed fee at the recording office of any document required or permitted to be submitted to a recorder under this Act and "filed" and "filing" have corresponding meanings;
- "holder", when referring to the holder of an unpatented mining claim or to the holder of a quarry permit issued under this Act, means the holder of record;
- "land" includes an interest in land;
- "lease" means a lease issued under this Act or a precedessor of this Act but does not include a lease referred to in section 96 (lease under previous Act);
- "mine", when used as a noun, includes,

- (a) any opening or excavation in or working of the ground, for the purpose of winning, opening up or proving any mineral or mineral-bearing substance,
- (b) any mineral deposit, stratum or place where mining is or may be carried on,
- (c) all ways, works, machinery, plant, buildings and premises below or above ground belonging to or used in connection with a mine,
- (d) any excavation or opening of the ground made for the purpose of searching for or removal of minerals, rock or stratum,
- (e) any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, sifting, drying, oxidizing, reducing, leaching, roasting, smelting, refining, treating or research on any mineral-bearing substances, and
- (f) a quarry;
- "mine", when used as a verb, and "mining" include any mode or method of working whereby earth, rock, stratum, stone or mineral-bearing substance may be disturbed, removed, washed, sifted, dried, reduced, leached, roasted, smelted, refined, oxidized, crushed or dealt with for the purpose of obtaining any mineral therefrom, whether it has been previously disturbed or not, and the operation of a quarry;
- "minerals" means all naturally occurring metallic and nonmetallic minerals including natural gas, petroleum, coal, quarry material, sand and gravel, gold, silver, all rare and precious metals, salt and peat;
- "mining claim" means a parcel of land, including land under water, that has been staked in accordance with this Act and the regulations;
- "mining land" means,
 - (a) land of which the mining rights have been staked and recorded as a mining claim or land of which the surface rights or the mining rights or the mining rights and surface rights have been patented or leased or held under a licence of occupation under or by authority of a statute, regulation or order in council for use for mining purposes, and

- (b) land used or intended to be used for mining purposes;
- "mining rights" means the right to minerals on, in or under any land;
- "Minister" means the Minister of Natural Resources;
- "Ministry" means the Ministry of Natural Resources;
- "patent" means a freehold grant from the Crown;
- "peat" means vegetable matter decomposed in water and partly carbonized to such an extent that it may be used as fuel;
- "permittee" means the holder of a quarry permit;
- "placer deposit" means a concentration of heavy minerals or precious stones by natural mechanical concentration of mineral particles from weathered debris;
- "prescribed" means prescribed by the regulations;
- "prospecting" means the investigating of and searching for minerals;
- "quarry" means land from which quarry material, sand and gravel and peat is being or has been removed by surface or underground excavation;
- "quarry material" includes rock, shale, dolostone, limestone, marble, sandstone, granite, quartz, feldspar, overburden, fluorspar, gypsum, clay, marl and any other material prescribed that is the property of the Crown;
- "regulations" means the regulations made under this Act;
- "Supervisor" means the Supervisor of the Mining Lands Section of the Land Management Branch of the Ministry;
- "surface rights" means every right in land other than mining rights;
- "transfer", when referring to land, does not include surrender or forfeit;
- "Treasurer" means the Treasurer of Ontario and Minister of Economics;

"unpatented", when referring to land, means land in respect of which no patent or lease has been issued or in respect of which, the interest given by patent or lease has reverted, other than by transfer, to the Crown:

"valuable mineral" means a deposit of mineral evaluated at the time of discovery to be of such a nature and containing such kind and quantity of mineral in place, other than limestone, marl, clay, sand and gravel, marble, peat or building stone, that the vein, lode or deposit has the potential of being or becoming a profitable producing mine. R.S.O. 1980, c. 268, s. 1, amended.

2.—(1) The purpose of this Act is to encourage prospect- Purpose ing, staking and exploration for the development of mineral resources of Ontario.

(2) Clause 2 (a) of the *Planning Act*, 1983 does not apply where prospecting, staking and exploring for, and develop- does not does not ment of, mineral resources are carried out in accordance with apply this Act and the regulations. New.

PART I

ADMINISTRATION AND RECORDS

3. The Minister is responsible for the administration of Administhis Act and the management and disposition of mineral by Minister resources for the benefit of the people of Ontario. R.S.O. 1980, c. 268, s. 4, amended.

4. The Minister may divide the Province of Ontario into Mining mining divisions and may alter the number, limits or extent R.S.O. 1980, c. 268, s. 14, amended. thereof.

5.—(1) The Lieutenant Governor in Council may appoint Appointment an employee of the Ministry as a recorder for each mining division.

(2) The Minister may appoint an employee of the Ministry Deputy as a deputy recorder for each mining division who shall, under the supervision and direction of the recorder, exercise, on behalf of the recorder, all the duties and powers of the recorder except those specifically restricted in the appointment.

(3) Where a recorder is absent because of illness or for any Deputy as other reason, the deputy recorder shall act as recorder on a recorders temporary basis. R.S.O. 1980, c. 268, s. 6 (1, 2), amended.

Recording office

6.—(1) Each mining division shall have a recording office and the recording office is the proper office for filing and recording all documents required or permitted to be filed under this Act.

Documents filed in Minister's office

- (2) The office of the Minister is the proper office for depositing all documents required or permitted to be deposited under this Act affecting,
 - (a) a licence of occupation or exploratory licence of occupation;
 - (b) a right, privilege or interest that may be acquired under this Act arising from a licence of occupation or exploratory licence of occupation; or

R.S.O. 1980, cc. 230, 445 (c) a grant under this Act that is not a grant registerable under the *Land Titles Act* or the *Registry Act* or a right, privilege or interest that may be acquired under this Act in respect of such grant.

Provision of records, etc.

- (3) Every recorder shall provide for inspection any record of a mining claim kept in his recording office and any filed document relating thereto and,
 - (a) shall supply a copy of any record of a mining claim and a copy of the whole or part of any document kept in the recording office; and
 - (b) shall certify, on request, any copy provided under clause (a).

Maps to be kept

- (4) Every recorder shall keep in his recording office,
 - (a) a map showing the territory included in the mining division; and
 - (b) township or area maps.

Idem

(5) Every recorder shall indicate on the maps referred to in clause (4) (b) all mining claims as they are recorded.

Provision of maps

(6) On request, the recorder shall provide for inspection any map mentioned in subsection (4). R.S.O. 1980, c. 268, s. 15, amended.

Inspector

7.—(1) The Minister may designate, in writing, any employee of the Crown as an inspector for the purpose of this Act.

(2) Every employee of the Ministry who is a recorder, min- Idem ing claim inspector, mineral resources co-ordinator or a geologist is an inspector for the purpose of this Act.

(3) Subject to subsection (4), for the purpose of this Act Powers of and the regulations,

inspector

- (a) an inspector who is a recorder, mining claim inspector or has been designated under subsection (1),
 - (i) may enter in or on any land or buildings during normal business hours without warrant,
 - (ii) may require the production of any licence, permit, record, report or land survey and may inspect and make copies of anything produced, and
 - (iii) alone or in conjunction with other persons possessing special or expert knowledge, may make such examinations or tests as he considers necessary to ascertain whether this Act and the regulations are being complied with and, for such purpose, may take or remove any material or substance; and
- (b) an inspector who is a geologist or a mineral resources co-ordinator may examine any land for geological purposes and remove representative surface samples of rock or mineral sufficient for the purpose of testing or analysis.
- (4) No inspector shall enter,

a locked building; or (a)

Restricted entry into core storage areas and dwelling

(b) a room or place being used as a dwelling,

except with the consent of the mining claim holder, lessee, owner or occupier, as is appropriate in the circumstances. New.

8. Every recorder, deputy recorder, Director and Supervi-Commissor is ex officio a commissioner for taking affidavits in for affidavits Ontario. R.S.O. 1980, c. 268, s. 13, amended.

9.—(1) No employee of the Ministry who is a recorder, Employees of deputy recorder, mining claim inspector, geologist or mineral resources co-ordinator or has access greater than that of the from staking, public to information provided under this Act may directly or

indirectly, by himself or by any other person, stake a mining claim or acquire any right or interest in an unpatented mining claim.

Staking, etc., void

(2) Every staking or right or interest acquired by a person in contravention of subsection (1) is void. R.S.O. 1980, c. 268, s. 12, amended.

Evidence of records or documents

10. A copy of a record mentioned in subsection 6 (3), every document filed in a recording office and every document deposited under subsection 6 (2) (in the Minister's office), certified to be a true copy by the person who has custody of the record or document, may be received in any court as *prima facie* proof of the record or document and its contents without proof of the signature or official position of the person making the certification. R.S.O. 1980, c. 268, s. 9, amended.

Filing constitutes notice

11. The filing of a document under this Act constitutes notice of the document notwithstanding any defect in the requirements for recording but it is the duty of the recorder not to record except upon determining that the requirements of this Act and the regulations have been met. R.S.O. 1980, c. 268, s. 73, amended.

Instrument deemed to be recorded when filed **12.**—(1) Except as provided in section 41 (recording a mining claim), if all requirements for recording have been met, every recordable document shall be deemed to have been recorded at the time that it was filed.

Idem

(2) Where a document is not recordable because of a deficiency in the document or any supporting evidence or the proper fee has not been submitted, and the person filing the document remedies the problem within the time specified by the recorder, subsection (1) applies as if the document was recordable when it was filed. *New*.

Priority of interest

13. Priority of recording prevails unless before the prior recording there has been actual notice of the prior document by the person claiming under the prior recording. *New*.

Recording documents

14.—(1) Except as otherwise provided in this Act or the regulations, no document affecting a recorded right or interest acquired under this Act shall be recorded unless it is signed and attested to by affidavit.

Where corporate seal

(2) Where an instrument executed by a corporation has the corporate seal stamped thereon, the affidavit referred to in subsection (1) is not required. R.S.O. 1980, c. 268, s. 71, amended.

11

(3) A notice of a document giving rise to an express, Trusts implied or constructive trust, relating to an unpatented mining claim, shall not be recorded.

MINING

- (4) Describing a mining claim holder as a trustee, whether Describing holder as the beneficiary or object of the trust is or is not mentioned, trustee, does not constitute notice of a trust and does not impose on etc., effect any person dealing with the holder the duty to enquire as to the power of the holder in respect of the mining claim and the holder may deal with the mining claim as if the description had not been inserted. R.S.O. 1980, c. 268, s. 68, amended.

15.—(1) Where, during any twelve-month period, the time day remains for doing something under this Act is extended, the extension unchanged does not affect any requirement under this Act to do anything required to be done, during the twelve-month period next following, by the anniversary date ending that next twelve-month period.

(2) Where the time for doing something under this Act is Anniversary suspended, the next anniversary date after the suspension in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the suspension and all subsequent anniversary dates shall be adjusted accordingly. New.

changed

16.—(1) A copy of a writ of execution certified by the Writs of sheriff of a county or district or a bailiff of a small claims court to be a true copy of a writ in his hands may be filed and the recorder, upon being given the number or description of a mining claim of which the execution debtor is the recorded holder or in which he has a recorded interest, shall record the writ on the record of the claim.

execution

(2) A writ of execution, upon being recorded, binds all Effect of rights or interests of the execution debtor in the appropriate mining claim and authorizes the sheriff or bailiff to sell and realize upon the rights or interests affected.

(3) A transfer under subsection (2) from a sheriff or bailiff Transfer to a purchaser may be recorded in the same manner and with the same effect as a transfer from the execution debtor.

(4) After the recording of a writ of execution, the sheriff, Keeping bailiff or the execution creditor may do anything that the execution debtor could do to keep the mining claim, right or standing interest in, or restore it to, good standing and is entitled to are recording of add the necessary expense thereof to the execution debt.

Discharge of execution

(5) A writ of execution may be discharged by recording a certificate from the sheriff or bailiff that the mining claim is no longer bound by the writ, by recording a release from the execution creditor or by filing an order of the Commissioner directing its removal. R.S.O. 1980, c. 268, s. 75, amended.

Address for service 17.—(1) Every application for a prospector's licence shall have endorsed thereon the residence and post office address of the person making it, at which address service may be made.

Substitution

(2) An address provided under subsection (1) may be substituted with another address by the licence holder notifying the recorder, in writing, of the substitution.

Service

(3) Where a person is required or entitled under this Act or the regulations to be served, service is sufficiently made if delivered or sent by prepaid first class mail to the person at the address given under subsection (1) or (2).

Idem

(4) Where service is made by prepaid first class mail under subsection (3), it shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1980, c. 268, s. 67, amended.

Correction of instrument

18.—(1) Where a document conveying an interest has been issued,

(a) to or in the name of the wrong person through mistake or contains a clerical error, misnomer or a wrong description of the land intended to be granted; or

R.S.O. 1980, c. 413 (b) for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*,

R.S.O. 1980, cc. 230, 445 the Minister, if no indication of an adverse interest is filed or registered in respect of the land and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may cancel the document by issuing a correct one or one with a revised description, as the case may be, in its stead.

Effective date

(2) A corrected document issued under this section shall relate back to the date of the cancelled one and has the same effect as if issued on the day of the cancelled document. R.S.O. 1980, c. 268, ss. 106, part, 107, part.

Time expiring on a Saturday 19. Where time limited for doing anything in a recording office or the office of the Commissioner or the Minister

expires on a Saturday, the time so limited extends to and the thing may be done on the day next following that is not a holiday. R.S.O. 1980, c. 268, s. 159, amended.

MINING

20. Where power is conferred by this Act on the Commis-Power to sioner to extend the time for doing an act, the power may be exercised as well after as before the expiration of the time allowed for doing the act. R.S.O. 1980, c. 268, s. 158, amended.

extend time

PART II

PROSPECTING, STAKING AND RECORDING MINING CLAIMS

21.—(1) No person may prospect on Crown land, stake or Prospector's record a mining claim or acquire any right or interest therein required unless he is the holder of a prospector's licence issued under this Act. R.S.O. 1980, c. 268, s. 18 (1), amended.

- (2) Subsection (1) does not apply to a sheriff, bailiff or exe-Exception cution creditor exercising his rights under section 16.
- (3) Any individual may, on behalf of a holder of a prospec- No licence tor's licence, erect posts or blaze lines or affix duplicate tags assist in or new tags in accordance with subsection 34 (5) and that indi-staking, etc. vidual need not hold a prospector's licence.

required to

- (4) No person may hold more than one prospector's One licence licence.
 - (5) A prospector's licence is not transferable.

Licence not transferable

- (6) No individual under the age of sixteen years may hold a Age restriction prospector's licence.
- (7) No individual under the age of eighteen years may stake Idem a mining claim or acquire a right or interest therein.
- (8) A prospector's licence is valid for the life of the person Lifetime to whom it is issued.
- Application (9) A recorder may issue a prospector's licence or replacefor licence ment thereof to any applicant who applies therefor. R.S.O. 1980, c. 268, s. 19, amended.
- 22.—(1) Where the recorder finds, after a hearing, that Suspension the holder of a prospector's licence has contravened any of the provisions of this Act or the regulations, he may, by order and upon notifying the licensee, suspend the licence for a period not exceeding five years.

of licence

Limited effect

(2) Notwithstanding the suspension of a licence, the licensee may continue to maintain his mining claims by performing assessment work and may hold or otherwise deal with his mining claims. *New*.

Entering on land **23.** Except as otherwise provided in this Act, any recorded mining claim holder or an agent on his behalf may enter on the claim and explore for minerals and perform the work required by this Act to maintain it. R.S.O. 1980, c. 268, s. 28, amended.

Crown land eligible for prospecting

- **24.**—(1) Any Crown land may be prospected except where,
 - (a) the land has been withdrawn from prospecting;
 - (b) there is a mining claim in good standing;
 - (c) the land has been set apart as Indian reserve land;

R.S.O. 1980, c. 401 (d) the land has been set apart under the *Provincial Parks Act*; or

1922, c. 24

(e) the mining rights are held by the Crown under *The Canada Company's Lands Act*, 1922.

Exception

- (2) Clause (1) (b) does not apply to prevent,
 - (a) the person who staked the mining claim from prospecting the claim before it is recorded; or
 - (b) the mining claim holder from prospecting it.

Idem

(3) Clause (1) (d) does not apply to prevent prospecting in accordance with regulations made under the *Provincial Parks Act. New.*

Crown land eligible for staking

- 25. Any Crown land may be staked as a mining claim except where,
 - (a) the land has been withdrawn from staking;

R.S.O. 1980, c. 413

- (b) a bona fide application under the Public Lands Act in respect of the land is pending in the Ministry and the pending disposition may include the mining rights;
- (c) the surface rights have been subdivided, surveyed, sold or otherwise disposed of for summer resort purposes;

- (d) the land has been set apart under the *Provincial R.S.O.* 1980, *Parks Act*:
- (e) the mining rights are held by the Crown under *The* 1922, c. 24 *Canada Company's Lands Act*, 1922;
- (f) the Minister, the Minister of Energy or the Minister of Transportation and Communications certifies that the land is required for the development of water power or for a highway or some other purpose in the public interest and the Minister is satisfied that the mining rights do not constitute valuable mineral;

1986

- (g) the land has been set apart as Indian reserve land; or
- (h) a proceeding under this Act in respect thereof is pending before a court, the Commissioner or a recorder.
- **26.**—(1) No person may prospect or stake a mining claim Crop bearing on that part of land that,
 - (a) is used as a garden, orchard, vineyard or nursery;
 - (b) bears crops that may be damaged by prospecting; or
 - (c) has situated thereon a spring, artificial reservoir, dam, waterworks, dwelling house, outhouse, manufactory, public building, church or cemetery,

except with the consent of the person entitled to the surface rights or under an order of the recorder.

- (2) An order referred to in subsection (1) may be subject to Order such terms as the recorder considers proper.
- (3) Where land is prospected or staked under an order Compensation made under this section, section 106 (compensation) applies.
- (4) In subsection (1), "person" includes the Crown. Interpretation R.S.O. 1980, c. 268, s. 33, amended.
 - **27.**—(1) A mining claim that encompasses,

Exception

(a) land, the surface rights of which have been subdivided, surveyed, sold or otherwise disposed of by the Minister for summer resort purposes; or

(b) land referred to in subsection 26 (1) in respect of which the consent referred to in the said subsection is not received,

may be staked and recorded subject to a reservation of the surface and mining rights in the encompassed land.

Idem R.S.O. 1980, c. 401 (2) Clause 25 (d) does not apply to prevent staking in accordance with regulations made under the *Provincial Parks Act*.

Idem 1924, c. 15 (3) Clauses 24 (1) (c) and 25 (g) do not apply to prevent prospecting or staking in accordance with *The Indian Lands Act*, 1924. R.S.O. 1980, c. 268, s. 30, amended.

Where forfeiture termination or surrender

28. Where a licence of occupation in respect of, or a leasehold or freehold interest in, mining land has been surrendered to the Crown, expires or is terminated or forfeited, the land involved is not open for prospecting or staking until a time fixed by the Minister is published in *The Ontario Gazette*. *New*.

Agricultural designation

29.—(1) The Minister may designate any Crown land that is open for prospecting or staking as suitable for disposition for agricultural purposes.

Mining claims on agricultural lands (2) A person who stakes or records a mining claim on land designated under subsection (1) does not obtain thereby surface rights or the right to obtain surface rights to any part thereof for any purpose.

Where surface rights necessary for mining operations (3) Where surface rights on any land designated under subsection (1) are required to carry on mining operations, the Minister may determine the part of the surface rights so required and may sell or lease to the mining claim holder the surface rights or such part thereof as he considers essential to the efficient carrying on of mining operations.

Conditions for sale or lease (4) A sale or lease under subsection (3) may be subject to such conditions precedent or subsequent as the Minister considers proper. R.S.O. 1980, c. 268, s. 41, amended.

Areas requiring protection **30.**—(1) The Minister may designate any Crown land that is open for prospecting and staking as being areas requiring protection.

Idem

(2) All Crown land that is within ninety-five metres of a lake, river or stream is designated as being an area requiring protection.

(3) No person shall strip, trench or excavate any land desig- Stripping, nated under subsection (1) or (2) except in accordance with prohibited the prior consent of the Minister.

(4) The Minister may reduce or eliminate the distance referred to in subsection (2) within any designated area. New.

Alterations by Minister

31.—(1) Where the Minister recommends the establish- Townsites on ment or extension of a townsite on any part of an unpatented claims mining claim, the Lieutenant Governor in Council may reserve the surface rights on the claim or such parts of it as may be necessary for townsite purposes.

(2) The Lieutenant Governor in Council may make such Regulations regulations as the Lieutenant Governor in Council considers necessary for the better carrying out of this section. R.S.O. 1980, c. 268, s. 66.

32.—(1) The Minister may by order,

Withdrawing or reopening

- (a) withdraw from prospecting or staking any land, the mining rights or surface rights of which are in the Crown; and
- (b) reopen for prospecting or staking any land, mining rights or surface rights that have been withdrawn under this Act or a predecessor thereof.
- (2) An order under subsection (1) is not a regulation within Order not a the meaning of the Regulations Act. R.S.O. 1980, c. 268, R.S.O. 1980, s. 36, amended.

regulation c. 446

33. A mining claim may be staked in a prescribed size, form and manner on any day. New.

Size of mining claim

34.—(1) Tags and duplicate tags shall be provided by the Tags Ministry.

(2) A tag may be used once only.

Idem

(3) An unused set of tags may be transferred.

Idem

(4) The licensee, at the time of staking, shall personally Tagging at affix the respective tag of a set of tags at each corner of a mining claim and affix tags on the line posts.

(5) If tags are not available at the time of staking, the licen- Where tags see shall personally mark on each corner post and line post available

the prescribed information and within six months after the date of recording affix the tags assigned by the recorder.

For affixing tags

(6) The recorder may by order extend the time for affixing tags on application made during the thirty days before the expiration of the six months. *New*.

Application to record staking **35.**—(1) An application to record the staking of a mining claim shall not be accepted unless it is filed in the recording office within forty-one days after the day on which staking was completed.

Priority of completion

(2) Priority of completion of staking a mining claim shall prevail notwithstanding that a prior application to record all or part of the same lands has been filed or recorded. *New*.

Substantial compliance

36. Substantial compliance, as nearly as circumstances will reasonably permit, with the requirements of this Act and the regulations as to the staking of a mining claim is sufficient. R.S.O. 1980, c. 268, s. 50.

Recorder may order alterations

- **37.**—(1) Where there is a question whether a mining claim has been staked in accordance with the Act and the regulations and the recorder is satisfied that there is substantial compliance with the provisions of this Act and the regulations, he may make an order directing or permitting a holder,
 - (a) to move, remove, alter or replace posts and tags;
 - (b) to move or alter claim lines;
 - (c) to affix tags that have not been affixed at the time of staking; and
 - (d) to replace tags, affixed at the time of staking, that have since been removed or destroyed.

Time for work to be completed (2) Every recorder who makes an order under subsection (1) shall set out in the order the time within which the work must be completed and reported to him. R.S.O. 1980, c. 268, s. 131 (6), amended.

Improper description of area

38.—(1) Where, in the opinion of the recorder, there has been an attempt made, in good faith, to comply with this Act and the regulations, the inclusion of more or less than the prescribed area in a mining claim or the failure to describe or set out in a filed application, sketch or plan the actual area or parcel of land, the mining rights of which were staked, does not invalidate the claim.

(2) Where a mining claim exceeds the area prescribed, the Claim may area of the claim may be reduced by the recorder. R.S.O. 1980, c. 268, s. 51 (5), amended.

MINING

39. A mining claim staked in a restricted travel zone Restricted under the Forest Fires Prevention Act shall not be recorded R.S.O. 1980, unless the applicant satisfies the recorder that he entered the c. 173 fire district before it was declared to be a restricted travel zone or did so under the authority of a travel permit. R.S.O. 1980, c. 268, s. 49, amended.

40.—(1) No mining claim shall be recorded in respect of Where land owned by the Ontario Northland Transportation Commission, except with the consent of the Commission or the to record Minister

- (2) No mining claim shall be recorded, except with the con- Idem sent of the Minister, in respect of,
 - (a) land reserved or set apart as a townsite by the Crown: or
 - (b) land laid out into town or village lots on a registered plan by the owner thereof.
- (3) An application to record the staking of a mining claim Idem on land mentioned in subsection (1) or (2) may be filed with the recorder pending the consent of the Commission or the Minister. New.

41. The time of recording a mining claim that has been Time of filed is the time that the application to record is stamped as approved. R.S.O. 1980, c. 268, s. 54, part, amended.

42. An individual who has staked a claim may apply to Recording in have the staking recorded in the name of another person. New.

another name

43.—(1) Except as authorized by this Act, any person who Failure to stakes a mining claim and fails to file an application to record the staking within the allowed time is not entitled to again stake the land or any part thereof or to record a mining claim thereon unless he satisfies the recorder, by affidavit, that he acted in good faith and not for an improper purpose.

file staking

(2) Failure to file a staked mining claim is not an Failure not abandonment. R.S.O. 1980, c. 268, s. 48, amended.

abandonment

44. The letters designating the mining division in which Mining claim the mining claim is situate assigned by the recorder at the time

of recording and the number of the set of tags affixed at each corner post of the claim constitute the number of the mining claim. *New*.

Death of staker or holder **45.**—(1) Where a person in whose name a mining claim has been staked dies before the claim is recorded or where a holder dies before the issue of a lease for his mining claim, notice of the death, in the form of an affidavit or death certificate, may be filed.

Time suspension

(2) Where the notice referred to in subsection (1) is filed, no person shall stake a mining claim comprising any part of the claim without the consent of the Commissioner and all time requirements in respect of the claim are suspended for one year from the time the notice is filed or until a vesting order is made under subsection (3), whichever is sooner.

Application for vesting order by Commissioner (3) Where a notice of death has been filed, the personal representative, devisee or next of kin of the deceased may apply to the Commissioner within one year after the notice is filed for an order vesting in the applicant the interest of the deceased in the mining claim. R.S.O. 1980, c. 268, s. 88, amended.

Conflicting interests

(4) Where an application is made under subsection (3) and there is something filed that indicates that a person other than the applicant may have an interest in the mining claim or any part thereof, the Commissioner may make such order settling the interests of the persons involved as he considers equitable in the circumstances. *New*.

Re-identification of boundary lines **46.**—(1) Every holder of a mining claim recorded under this Act shall re-identify the boundary lines of the claim, in the same manner as is required to identify lines for original stakings, at ten-year intervals following the recording of the claim and must give the recorder an affidavit to that effect on or before the end of each ten-year interval.

Exception

(2) This section does not apply to a mining claim in respect of which a lease or patent has been issued. *New*.

Mining claim recorded in wrong division **47.** If by error a mining claim is recorded in the recording office for a mining division other than that in which the land is situate, the error does not affect the holder's interest in the land and the recorder in the appropriate division shall record the mining claim, assign the appropriate letters designating the correct mining division and indicate on the new record the date of the former record and date of rectification. R.S.O. 1980, c. 268, s. 53, amended.

48. Where a mining claim is situated in more than one Claim in mining division, the claim may be recorded in the recording one more than office of either division and all subsequent documents relating division to the claim shall be filed and recorded in that recording office. New.

49. Any person who has staked any part of a recorded Invalid mining claim and has filed an application to record the staking may, only at the time of filing the application, by way of a dispute, raise the issue that a recorded mining claim or group of claims is invalid in whole or in part. New.

50.—(1) Where a dispute is filed, the recorder shall record Recording of it on the record of the disputed mining claim or group of claims.

disputes

(2) Where a dispute is filed in respect of a mining claim for Dispute to which a certificate of record is pending, the recorder shall signer transfer the dispute to the Commissioner.

(3) A dispute shall not be recorded against a mining claim Idem in respect of which a certificate of record has been granted or where the validity of the manner and method of staking the claim has been adjudicated by the recorder or the Commissioner.

(4) Upon a dispute being recorded, all time requirements Time under the Act or regulations as to performing and recording work in respect of the mining claim involved are suspended and do not begin to run until the dispute is finally adjudicated and the decision is entered on the record of the claim. R.S.O. 1980, c. 268, s. 56, amended.

suspended

51.—(1) Where a mining claim has been recorded, the Certificate claim holder may, at any time after the expiration of forty-one days after the recording, apply for a certificate of record.

(2) Subject to subsection (3), a recorder, upon an appli- Idem cation being made therefor, shall issue a certificate of record in respect of the mining claim if it is not subject to an unresolved dispute and the recorder is satisfied that the requirements of this Act and the regulations with respect to the staking of the claim have been met.

(3) Where a dispute is transferred to the Commissioner Idem under subsection 50 (2), the Commissioner may, where he considers it to be appropriate, direct the recorder to issue the certificate of record. R.S.O. 1980, c. 268, s. 57 (1), amended.

Certificate conclusive evidence

52.—(1) A certificate of record is final and conclusive evidence of the proper staking of a mining claim.

Cancelling certificate of record

(2) Notwithstanding subsection (1), where a certificate of record has been issued by administrative error, the Commissioner may cancel it on the application of the Director. R.S.O. 1980, c. 268, s. 58, amended.

Free assays

53. Every person who records a mining claim may obtain from the recorder free assay coupons in accordance with the regulations. R.S.O. 1980, c. 268, s. 63 (1), amended.

Limited rights of claim holders

54.—(1) The act of,

- (a) staking;
- (b) filing of an application for; or
- (c) recording of,

a mining claim does not confer upon the staker or holder the right to take, remove or otherwise dispose of any minerals, quarry material or other material, including buildings, machinery or chattels, found in, on or under the mining claim or any other right to or in respect of the mining claim other than such rights as are specified in this Act.

Licensee

(2) A holder who does not have a certificate of record in respect of the mining claim is a mere licensee of the Crown.

Tenant at will

(3) A holder who has a certificate of record but does not have a patent or lease in respect of the mining claim is a tenant at will of the Crown. *New*.

Right of access

55.—(1) A mining claim holder has the right prior to any subsequent right to use surface rights in respect of the claim to enter on, use and occupy such parts thereof as are necessary for the purpose of prospecting and exploration for minerals leading to the development and operation of a mine.

Release of surface rights (2) Where a mining claim holder releases his right to use the surface rights or any part thereof, the recorder shall record the release on the record of the claim.

Where holder does not consent to release of surface rights (3) Where an application is made under any Act for the use of surface rights in respect of a mining claim that have not been reserved or excluded and the claim holder does not consent to the proposed use, the Minister may refer the application to the Commissioner to determine the disposition of the surface rights.

(4) Where an application under subsection (3) is referred to Notice the Commissioner, he shall give all interested persons at least ninety days notice of the hearing.

MINING

- (5) Where an application referred to in subsection (3) is Survey made, the Minister may require the applicant to provide a survev of the land involved. R.S.O. 1980, c. 268, s. 61, amended
- 56. An unpatented mining claim is not liable to assess- Municipal tax ment or taxation for municipal or school purposes. R.S.O. 1980, c. 268, s. 60, part, amended.
- 57. Where the Minister is satisfied that the purpose of Placer holding a mining claim is to mine a placer deposit, he shall give written confirmation that when a lease is issued in respect of the claim it shall contain the right to remove sand and gravel therefrom. New.

58.—(1) The Minister may give written permission, sub-Permission ject to such conditions as are considered appropriate, to mine, minerals mill and refine minerals from an unpatented mining claim for the purpose of testing mineral content.

(2) Permission granted under subsection (1) shall be for a Conditions specified time and shall cover a specified quantity of minerals.

(3) The end product of mining, milling and refining permit-Sale of ted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased or patented under this Act.

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so the sale or disposition shall be in accordance with such terms as the Minister may impose.

Permission

(5) Hand samples for the purposes of analysis may be Hand removed without permission under subsection (1). R.S.O. 1980, c. 268, s. 62, amended.

59.—(1) No person is entitled to enforce a right or interest in a mining claim contracted for or acquired before the staking of the claim where the staking is done by another person prior unless the right or interest is evidenced by writing, signed by the person doing the staking or the mining claim holder, or is corroborated by the evidence of a second person or by physical evidence that tends to support the claim to the right or interest.

Enforcing interest acquired to staking Where

not apply

R.S.O.1980, c. 481 does

(2) Where a right or interest is evidenced as required by subsection (1), the Statute of Frauds does not apply. R.S.O. 1980, c. 268, s. 69 (1), amended.

MINING

Inspection by recorder

60.—(1) The recorder may order an inspection of a mining claim at any time without notice for the purpose of ascertaining whether there is compliance with this Act and the R.S.O. 1980, c. 268, s. 89, part, amended.

Report

(2) Where an inspection is ordered under subsection (1), the inspector shall file a report of the inspection with the recorder who shall enter a record of the report on the record of the mining claim involved.

Hearing by recorder

(3) If the recorder is of the opinion that, based on the report filed, there is a question as to compliance with the provisions of this Act or the regulations, he shall hold a hearing New. to determine the question.

Improper use of land

61.—(1) Where the Minister believes that a mining claim is being used for a purpose other than that of the mining industry, the Minister may direct the Commissioner to hold a hearing.

Cancellation of claim

(2) Where, after holding a hearing, the Commissioner is satisfied that the mining claim is being used for a purpose other than that of the mining industry, he may make an order cancelling the claim.

Idem

(3) Where an order is made under subsection (2), the Commissioner shall file the order with the recorder and on the order being filed all interest in the mining claim forfeits to the Crown. R.S.O. 1980, c. 268, s. 65, amended.

Ministry error

62.—(1) Where an unpatented mining claim is subject to forfeiture as a result of an administrative error, the claim holder may apply to the recorder for an order confirming the claim.

Idem

(2) Where an application is made under subsection (1) and there is nothing filed to indicate that any part of the mining claim has been staked by another staker and there is no other reason why the order should not issue, the recorder may make an order confirming the claim.

Idem

(3) Where an application is filed under subsection (1) and something is filed indicating that a part of the mining claim has been staked by another staker, the recorder shall refer the matter to the Commissioner who may make such order subject to such conditions as he considers proper.

PART III

ASSESSMENT WORK

63.—(1) Every mining claim holder shall, during the five- Assessment year period immediately following the recording of his mining work-time period claim, perform annual assessment work as prescribed.

- (2) For the purpose of subsection (1), assessment work Idem credits shall be in terms of dollars spent.
- (3) For the purpose of verifying dollars spent, the Minister Additional may require the mining claim holder to provide information additional to that required under the regulations.

information

- (4) Where assessment work is done without expenditures, Idem the assessment work credits shall be as prescribed.
- (5) Every mining claim holder shall, not later than the anni- Time for versary date, file, in the recording office, a report of the assessment assessment work done for the purpose of complying with subsection (1). New.

64. Prospecting, airborne geophysical work and airborne geochemical work done on Crown land before the staking of the mining claim are eligible for assessment work credit as geochemical prescribed. New.

Prospecting,

65.—(1) No person shall start ground assessment work, other than prospecting, on Crown land for the purpose of assessment work credits before that land is staked as a mining staking claim or consent to record, where required by section 40, is given.

assessment

(2) No person shall strip, trench or excavate within fifty No metres from the edge of the road bed of a highway or road work without funded or maintained by the Ministry of Transportation and consent Communications except with the consent of the Minister.

- (3) No person shall perform ground assessment work in Idem respect of a mining claim that was staked pursuant to consent of the Crown under section 26 or on land, the surface rights of which were withdrawn under section 32, except in accordance with the directions of the Minister. New.
- **66.**—(1) Where there is no occupant of the surface rights, Right to do a mining claim holder may enter on the land comprising his assessment mining claim to perform ground assessment work.

Surface rights holder

(2) Where there is an occupant of the surface rights of the to be notified land comprising a mining claim, a mining claim holder who proposes to do ground assessment work shall give fifteen days notice, in writing, to the occupant of his intention to perform the work.

One-year work period

(3) A person who has given notice under this section may enter on the land and perform the work at any time during the twelve-month period immediately following the day the notice takes effect.

Further periods

(4) A person who has given notice under this section and has not completed the work in the twelve-month period but intends to complete the work shall give a further notice, in which event subsection (3) applies again.

Evidence of notice

- (5) A recorder shall not record ground assessment work unless the occupant has waived, in writing, the requirement for a notice or the mining claim holder certifies that,
 - (a) he has given the required notice;
 - (b) there is no occupant; or
 - the surface rights are held by the Crown. New.

Excess work

67. Where during any year a mining claim holder performs assessment work in excess of the prescribed requirements, he may include the excess assessment work in the report and the recorder shall credit the excess work against the requirements of subsequent years. New.

Work on adjoining claims

68. Credit for assessment work performed on an unpatented mining claim by the holder of the claim or by a person entitled by a recorded agreement to acquire an interest in the claim may be applied as assessment work credits on adjoining mining claims of which he is the holder or in respect of which he is entitled to acquire an interest.

Work on leased or patented

- 69. Credit for assessment work performed on land held under a patent, lease or licence of occupation may be applied, as prescribed, as assessment credits on adjoining unpatented mining claims if.
 - the land held under patent, lease or licence of occupation and the adjoining claims are held by the same person; or
 - (b) an agreement or notice of agreement in respect of application of credits between the holder of the land

held under patent, lease or licence of occupation and the holder of the adjoining claims is on the record of each of the claims.

70.—(1) Where two or more persons are the holders of a Proportionate mining claim, each of them shall contribute proportionately to of work by his interest or as they otherwise agree to the cost of the co-holders assessment work required to be done thereon.

(2) Where a person fails to contribute as required under subsection (1), the co-holder may apply to the Commissioner for an order vesting in him the rights of the person who failed to contribute. R S O 1980 c 268 s 76 amended

71. Where a mining claim holder defaults on a payment Default in for assessment work performed on the claim by a person who does not hold an interest in the mining claim, the Commissioner, on the application of the person who performed the work, may make an order vesting the interest or any part of the interest of the defaulting holder in the mining claim in the person who performed the work. R.S.O. 1980, c. 268, s. 81. amended

72.—(1) Where a report relating to technical assessment Report of work that is required to be submitted to the recorder.

technical assessment work

- is not filed with the recorder within sixty days after the recording of the assessment work, the recording shall be deemed to have been cancelled at the end of the sixtieth day and the recorder shall amend the record accordingly; or
- does not, in the opinion of the Minister, meet accepted technical standards, the Minister may allow a lesser amount of credit or may instruct the recorder to cancel the assessment work credits and the effective date of the amended credit or cancellation shall be the day the amendment or cancellation is recorded by the recorder.
- (2) The reports of all technical assessment work submitted under this section shall be available to the public. New.

Results public

(3) A decision by the Minister under clause (1) (b) concerning the amount of assessment work credits to be allowed is final. R.S.O. 1980, c. 268, s. 77 (21).

Amount of

(4) Where a mining claim holder applies, in writing, for an Extension extension before a technical report is due, the recorder may technical

allow an extension to the sixty days set out in subsection (1) to a maximum of an additional sixty days. *New*.

Work prohibited by R.S.O. 1980, c. 173

73.—(1) Where, in order to begin assessment work under this Act, a work permit that is required under any other Act is refused, the assessment work is prohibited under the *Forest Fires Prevention Act* or the holder defers the start of work at the request of the Crown, the recorder shall, on receiving satisfactory evidence of the refusal or prohibition or request, record the refusal or prohibition or request on the record of the mining claim.

Recording rescission

(2) The recorder, on being notified that a refusal, prohibition or request to defer is rescinded, shall record the date of the rescission on the record of the mining claim.

Extension of time

(3) Upon a rescission being recorded, the time for the performance of assessment work is suspended by the number of days between the recordings under subsections (1) and (2). R.S.O. 1980, c. 268, s. 79, amended.

Extension of time—late filing assessment work **74.**—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time, not exceeding one year, for performing and filing the report of the assessment work on such conditions as he considers proper.

Limitation

(2) After the sixth anniversary date, an extension of time may be granted only once except if the extension is required because of illness. *New*.

Extension of time-illness

75.—(1) Where required assessment work has not been performed because of the illness of the mining claim holder, the recorder may, without fee and on application of the holder supported by proof of illness, allow an extension of time, not exceeding one year, for performing and filing a report of the assessment work.

Proof of illness

(2) Proof of illness referred to in subsection (1) shall be verified, in writing, by a duly qualified medical practitioner or by such other evidence as is satisfactory to the recorder. *New*.

Certificate of performance of work **76.**—(1) The recorder, if satisfied that required assessment work has been performed, shall issue, on request therefor, a certificate to that effect.

(2) Before issuing a certificate under subsection (1), the Inspection recorder may inspect or cause the inspection of the assessment work.

(3) Subject to subsection (4), a certificate issued under sub- Certificate section (1) is final and conclusive evidence of the due performance of the assessment work therein certified.

evidence of work performed

(4) Where a certificate is issued under subsection (3) as a Cancellation result of a mistake, the Commissioner may cancel it upon the application of the Director and a decision by the Commissioner to cancel a certificate is final. New.

PART IV

ABANDONMENT, SURRENDER AND FORFEITURE OF MINING **CLAIMS**

77. The application of this Part is limited to unpatented Application mining claims. New.

unpatented claims

78.—(1) A mining claim holder may abandon the claim at Abandonment any time by filing notice of abandonment with the recorder.

(2) A mining claim holder may abandon any part of the Abandonment claim by filing notice of abandonment with the recorder dur- of claim ing the thirty-day period before an anniversary date if,

- all assessment work required to be done by that anniversary date has been completed and recorded for the portion to be retained;
- (b) there is no dispute filed in respect of the claim; and
- (c) the area to be retained is a single square or rectangular parcel,
 - (i) in unsurveyed townships in multiples of sixteen hectare square units, or
 - (ii) in surveyed townships in aliquot parts of lots or sections of not less than fifteen hectares more or less.

and the boundaries of the land retained are parallel to the original mining claim boundaries or the lot and concession lines.

Recording of abandonment

(3) Where a recorder receives a notice of abandonment under subsection (1) or (2), he shall post the notice in the recording office showing the filing date.

Order by recorder

(4) Where a notice of abandonment is filed under subsection (2), the recorder shall issue an order directing the moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed.

Compliance with order

(5) Where an order is issued under subsection (4), the mining claim holder affected shall file an affidavit within the time set in the order as to compliance with the order and a copy of the affidavit, marked with the date of posting, shall be posted by the recorder in the recording office.

Abandoned claim open for staking

(6) Every mining claim abandoned under subsection (1) is open for staking from 9 o'clock in the forenoon of the sixteenth day after the notice of abandonment is filed.

Idem

(7) Where part of a mining claim is abandoned under subsection (2), that part is open for staking from 9 o'clock in the forenoon of the sixteenth day after the posting of the affidavit required under subsection (5).

Reverting land

(8) Where a mining claim encompasses land that is not part of the claim and that land is abandoned under this section or otherwise would revert to the Crown, that land shall be deemed to be part of the encompassing mining claim and the mining claim holder shall be liable for the performance of assessment work and the payment of recording fees as if that land was part of the encompassing mining claim when it was recorded.

Order may be varied (9) Any order made under this section may be rescinded or varied where the person subject to the order applies therefor before the time set out in the order expires. R.S.O. 1980, c. 268, ss. 83, 84, amended.

Forfeiture

- **79.** Where the staker or holder of a mining claim has not, within the allotted time,
 - (a) complied with any requirement of this Act or the regulations as to staking or recording of a mining claim;
 - (b) complied with an order of the recorder or Commissioner;
 - (c) performed assessment work required by this Act;

(d) filed any report of work required to be filed under this Act:

MINING

- (e) after the fifth anniversary date for the claim, filed the required report of work or an application for a lease or applied for an extension of time to perform work:
- (f) re-identified boundary lines as required under this Act: or
- affixed tags as required by this Act,

on the expiration of the allotted time, all rights in respect of the claim are forfeited and, without a declaration, entry or act by the recorder, the mining claim is open for prospecting or staking from 9 o'clock in the forenoon of the day after the forfeiture. R.S.O. 1980, c. 268, s. 86, part, amended.

80.—(1) Where, without the written consent of the Forfeiture recorder, a mining claim holder removes a tag, stake or post etc. forming part of the staking of the claim or changes or effaces any writing or marking upon a tag, stake or post, the recorder may, after a hearing, order all rights in respect of the mining claim forfeited, in which event he shall set a time and date when the land is open for prospecting and staking.

(2) A person who stakes a mining claim on land in respect Dispute of which a mining claim is recorded and who alleges that a false report of work has been filed may apply to record the staking if he files a dispute at the same time.

(3) Where an application to record a staking and a dispute Hearing are filed under subsection (2), the recorder shall hold a hearing and, if he finds that a false report of work has been filed and that the applicant has staked the new mining claim in accordance with this Act and the regulation, shall order that all rights in the claim in respect of which the false report was filed are forfeited and shall record the new mining claim in the name of the applicant. New.

where fraud

81. When rights in respect of a mining claim are aban-Cancelled doned or forfeited, the recorder shall mark the record of the mining claim "cancelled" and shall post in the recording office, in the case of a forfeiture, a notice of the forfeiture. R.S.O. 1980, c. 268, s. 86, part, amended.

82.—(1) Any holder whose rights in a mining claim were Relief from forfeited under section 79 may apply, within six months after the forfeiture, to the recorder for relief from the forfeiture.

Idem

(2) Where the forfeiture resulted because boundary lines were not re-identified as required, the time restriction referred to in subsection (1) does not apply.

Idem

(3) Where the forfeiture resulted because tags were not affixed as required, the application under subsection (1) can be made only within sixty days after the forfeiture. *New*.

Order by recorder—re forfeiture

- **83.**—(1) Where an application has been made under section 82 and there is nothing filed to indicate that any part of the mining claim has been staked by another staker, the recorder may make an order relieving the claim from the forfeiture and,
 - (a) in the case where there was failure to perform assessment work within the required time, allowing an extension for a period of up to one year after the forfeiture, for the purpose of performing the assessment work;
 - (b) in the case where there was failure to file a report of assessment work within the time required, authorizing the filing of a report of assessment work;
 - (c) in the case where an application for a lease of a mining claim was not made within the time required, allowing the filing of the application;
 - (d) in the case where the boundary lines were not reidentified as required, allowing an extension of time to re-identify the boundaries;
 - (e) in the case where tags were not affixed as required, authorizing the proper affixing of tags; or
 - (f) in the case where there is non-compliance with an order of the recorder, directing a new order to the applicant.

Staking before order made (2) Where any part of a mining claim covered by an order made under subsection (1) is staked after the forfeiture but before the issue of the order, the order does not apply in respect of the claim so staked.

Compliance with order (3) Where an order has been made under clauses (1) (d) or (e), the mining claim holder involved shall notify the recorder, by affidavit, of compliance with the order. *New*.

84.—(1) Where an application has been made under sec-Order by tion 82 within sixty days after the forfeiture and something is signer filed indicating that a part of the mining claim has been staked -re by another staker, the recorder shall refer the matter to the Commissioner who may make any order that the recorder is empowered to make under section 83 and any such order may be subject to such conditions as the Commissioner considers proper.

(2) Where the recorder has referred a matter to the Commissioner under subsection (1), he shall so note on the record of the relevant mining claim.

by recorder

(3) Every order made under this section is subject to the Staker rights of any person who, in accordance with this Act and the notice regulations and without notice of the application for the protected order, stakes and files a mining claim in respect of any part of the mining claim affected by the order.

(4) No order made by the Commissioner under this section Filing of comes into effect until it is filed. R.S.O. 1980, c. 268, s. 86, amended.

PART V

LEASES, LICENCES OF OCCUPATION AND EXPLORATORY LICENCES OF OCCUPATION

85.—(1) Every mining claim holder who has complied Right to with this Act and the regulations is entitled to a lease of the claim mining claim in respect of the surface and mining rights or, where the surface rights have been disposed of before the claim was staked, the land has been designated under section 29 (agricultural designation), the surface rights have been withdrawn under section 32 or the claim holder so elects, the mining rights only.

(2) A recorded holder who has performed and recorded the Option required amount of assessment work to qualify for a lease may during the twelve-month period following the fifth anniversary of recording the claim,

- (a) apply and pay for a lease by the end of that period; or
- (b) continue to perform required assessment work and file a work report by the end of that period or, where an extension has been granted under section 74, by the end of the extended period.

Idem

(3) Any recorded holder who has performed and recorded the required amount of assessment work to qualify for a lease before the fifth anniversary of recording the claim may apply and pay for a lease at any time before the said fifth anniversary.

No lease where prior interest (4) Notwithstanding subsection (1), a lease shall not be issued for rights that are subject to an encumbrance, lien or other interest having priority to that of the mining claim holder. *New*.

Rental

86.—(1) Rental under a lease shall be as prescribed.

Rental where area of mining claim exceeds prescribed area (2) Where the area of a mining claim exceeds by more than 10 per cent the area prescribed for a mining claim and the claim is not reduced in size, the lease rental, per hectare, of the area in excess of the prescribed area is twice the prescribed rental.

Exception

(3) Subsection (2) does not apply where there is a group of adjoining claims held by the same person and their average area does not exceed by more than 10 per cent the area prescribed for a mining claim. R.S.O. 1980, c. 268, s. 94, part, amended.

Term of lease

87. Every lease shall be for a term of twenty-one years. *New*.

Renewals

88. Every lease issued under this Act may be renewed at the discretion of the Minister and where an application for renewal is made within ninety days after the expiration of the lease, the renewal may be granted retroactive to the date of expiration. *New*.

Reservations in lease

89.—(1) Every lease is subject to prescribed reservations, provisions and conditions except where the lease contains a provision that a specified prescribed reservation, provision or condition does not apply to that lease. *New*.

Idem

(2) Every lease is subject to a reservation of salt, peat, sand, gravel, natural gas and petroleum, clay and earth unless the Minister expressly waives any of the reservations. R.S.O. 1980, c. 268, s. 60 (3), amended.

Idem

(3) Every lease is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the lessee.

Crown reservation adjacent to water (4) In every lease of a mining claim comprised of land covered with or bordering on water, surface rights in the land, up

to 130 metres from the high water mark, are reserved to the Crown. R.S.O. 1980, c. 268, s. 43 (4), amended.

(5) In every lease of a mining claim traversed by a road Crown funded or maintained by the Ministry of Transportation and Communications, the surface rights in the road and the land roads lying ninety-five metres in width along both sides of the road, measured from the outside limits of the right of way of the road, are reserved to the Crown. R.S.O. 1980, c. 268, s. 43 (5), amended.

35

(6) The surface rights reserved by subsections (4) and (5) Reservation shall be deemed to apply to and to have been reserved in all leased claims leases of mining claims unless the reservation is waived by the Minister. R.S.O. 1980, c. 268, s. 43 (6), amended.

(7) All timber and trees on land subject to a lease remain Ownership of the property of the Crown and the Crown may enter on the in Crown land to carry on forestry, to cut and remove timber or trees and to make necessary roads for those purposes. R.S.O. 1980, c. 268, s. 105 (4), amended.

90.—(1) A survey made for the purposes of this Act must Survey be made by an Ontario land surveyor in accordance with the Surveys Act and pursuant to the instructions of the recorder.

R.S.O. 1980, c. 493

(2) Unless the recorder waives the requirement, a survey of Idem the mining claim involved must be filed before an application for a lease of the claim is made.

(3) Where two or more adjoining mining claims are Perimeter recorded in the same holder and the required assessment work sufficient for lease appears to have been performed and recorded on each claim, the recorder may, subject to subsection (7), allow a perimeter survey of the mining claims to be made in accordance with the Surveys Act.

(4) Upon a perimeter survey made under subsection (3) Merging being filed and approved, the claims included thereto are merged as one claim and the recorder shall so note on the record.

(5) Where claims are merged under subsection (4), all work Work credits credits relating to those claims shall be combined and shall apply to the new claim.

(6) Where a perimeter survey discloses that the require- Deficit ments referred to in subsection (3) have not been met, the holder of the claim shall make up the deficit before the first

anniversary date of the merged claim in addition to performing and recording any other required work for that period.

Inspection before perimeter survey (7) A recorder may allow a perimeter survey only if he is satisfied, on the basis of an inspector's report, that the requirements of this Act and regulations concerning the staking of mining claims have been complied with. *New*.

Surveys in subdivided townships (8) Every survey or legal description of a mining claim within a surveyed township shall indicate and describe the parts of the lots or sections, according to the original survey of the township, together with the areas thereof. R.S.O. 1980, c. 268, s. 45 (3).

Where no survey permitted (9) No person shall survey a mining claim while there is a dispute in respect of any part of the claim unless he does so with the consent of the recorder. New.

Where area not as prescribed

91.—(1) If a survey under this Act establishes that the area of a mining claim exceeds the prescribed permitted area, the recorder, on the request of the holder, may reduce the claim to the prescribed permitted area in any way he sees fit.

Land accidentally omitted (2) Where adjoining mining claims in unsurveyed townships or areas are recorded in the name of the same holder, and the sketches filed with the application to record show a plain intention to include, as part of the claims, all land, including land under water, within the perimeter of the claims, all the land, including land under water, within the perimeter of the claims, shall be included in the claim notwithstanding a survey disclosing that any portion was omitted.

Fractions

92.—(1) Where surveys of adjoining mining claims recorded in the names of different holders in unsurveyed townships or areas disclose a fraction or gore, the recorder may award, in his sole discretion, all or part of the fraction or gore to any or all of the holders of the adjoining mining claims.

Idem

(2) Where a fraction or gore is not awarded under subsection (1), it is not open for staking until such time and date as is set by the recorder. R.S.O. 1980, c. 268, s. 110 (2), part, amended.

Where area exceeds area prescribed

93.—(1) Where a survey establishes that the area of a mining claim exceeds the prescribed permitted area by more than 10 per cent and assessment work has not been done as required for an area of that size, a lease shall not be issued until the mining claim holder,

- (a) performs such additional assessment work as is prescribed: or
- (b) pays a prescribed amount instead of performing additional work. R.S.O. 1980, c. 268, s. 108, part, amended.
- (2) Where the holder elects, under clause (1) (a), to per-Idem form additional work, the recorder shall by order set the date by which the work is to be performed and the report thereof filed New.

94. Where at the time of applying for a lease, a mining Summer resort parcel claim holder can establish, to the satisfaction of the Minister, that the mining rights lying under any summer resort parcel situated within the limits of the claim contain valuable mineral, the mining rights may be included in the lease. New.

95. Except where an order has been made under Part VI Access suspending work and subject to the payment of compensation, granted by lease where compensation is payable, to an owner, lessee or occupant of the surface rights, every lessee of mining rights has such right of access to the land described in his lease as is necessary for prospecting and exploration for minerals, development of mines and mining of minerals except minerals expressly excepted in the lease or under this Act. New.

96.—(1) Notwithstanding any provision to the contrary, Lease under the rental payable for a lease of surface and mining rights or of mining rights issued under section 47, 52 or 100 of The Mining Act, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, is as prescribed for leases under this Act.

previous Act

(2) Every lease referred to in subsection (1) continues to be Renewal renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days after the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

(3) Where payment of the rental under a lease referred to Termination in subsection (1) is in arrears for two years or more, the lease for arrears may be terminated by an instrument in writing.

of rent

(4) When a lease is terminated under subsection (3), the Limitation land involved is not open for prospecting or staking until a prospecting time fixed by the Minister is published in The Ontario Gazette.

Converting

(5) Any lease referred to in subsection (1) may be converted to a lease issued under this Act upon the application of the lessee.

Natural gas and petroleum rent and royalties (6) The rent and royalties payable under a lease to produce natural gas and petroleum from Crown land issued for the first time or renewed on or after the 1st day of January, 1981 but before this Act comes into force shall be the rent and royalties prescribed and not as set out in the lease.

Regulations

(7) The Lieutenant Governor in Council may make regulations prescribing rent and royalties payable under leases referred to in subsection (6) and regulations made under this subsection may have retroactive effect. *New*.

Lease of surface rights for tailings, etc.

- **97.**—(1) Where the lessee or owner of mining rights or the holder of a licence of occupation requires the use of surface rights for,
 - (a) the disposal of tailings or waste material;
 - (b) the sinking of a shaft or erection of a building for mining purposes; or
 - (c) any other purpose essential to mining or mineral exploration,

the Minister may lease to him any available surface rights.

Application

- (2) Application for a lease under this section must be made, in writing, to the Minister with the applicant furnishing,
 - (a) a statement of the particular purposes for which the surface rights are to be used;
 - (b) an adequate description and plan or sketch of the area applied for;
 - (c) the first year's rental;
 - (d) proof of ownership or, in the case of a licence of occupation, proof that the applicant is the holder of the licence of occupation, of the mining rights that are the basis of the application; and
 - (e) such other particulars as the Minister may require.

Survey

(3) The Minister may require an applicant to furnish a survey by an Ontario land surveyor.

(4) A lease issued under this section shall be for a term of Term of twenty-one years except where the mining rights that are the basis of the application are held under a lease, the term of the lease under this section shall be coterminous with that lease.

MINING

39

(5) Where the mining rights that are the basis for a lease Termination issued under this section revert to the Crown, the lease thereupon terminates.

(6) A lease issued under subsection (1) terminates on the Idem lessee of the surface rights ceasing to be the same person as the lessee or owner of the mining rights or holder of the licence of occupation, as the case may be. R.S.O. 1980, c. 268, s. 97, amended,

98. The land, surface rights or mining rights held under a Lease void lease shall be used solely for the purpose of the mining indus-used other try and, on default thereof and on the recommendation of the than for Commissioner, the Lieutenant Governor in Council may purposes declare the lease terminated. R.S.O. 1980, c. 268, s. 98.

99.—(1) Where a holder of a lease produces evidence, Right to satisfactory to the Minister, that he is producing mineral in patent substantial quantities from land subject to the lease and production has been continuous for more than one year, he is entitled, on application therefor and surrender of his lease, to a patent of the mining rights held under the lease.

(2) In conjunction with a patent under subsection (1), the Additional Minister may grant a patent of such surface rights as he considers appropriate in the circumstances.

(3) Unless the requirement is waived by the Minister, every Survey applicant under this section shall provide a survey of the land in respect of which rights are to be patented.

(4) Subsection (1) does not apply to rights in land under No freehold navigable water.

of land under navigable water

(5) A lessee who, by virtue of subsection (4), is precluded Lease of from obtaining a patent under this section in respect of rights navigable in land under navigable water and whose lease is not in waters default, on written application therefor and surrender of the lease, is entitled to a new lease renewable in perpetuity containing a provision that where application for renewal is made within ninety days after expiration of the lease, the renewal shall be granted retroactive to the date of expiration. R.S.O. 1980, c. 268, s. 96, amended.

land under

MINING

Exploratory licence of occupation

100.—(1) The Minister, with the approval of the Lieutenant Governor in Council, may issue exploratory licences of occupation giving the right to search and explore for specific minerals on a specific parcel of land subject to such conditions and limitations as the Minister considers proper.

Special leases

(2) Where a licensee holding an exploratory licence of occupation finds deposits of minerals that, in the opinion of the Minister, are of potential economic importance, the Minister may issue a lease of land sufficient to encompass the deposits or 10 per cent of the land held under the licence, whichever is greater.

Idem

- (3) A lessee of a lease issued under subsection (2) who satisfies the Minister, prior to the expiration of the lease,
 - (a) that he is producing minerals in substantial quantities from the leased land; or
 - (b) that the deposit has further potential economic importance,

is entitled to a renewal of the lease for a term of twenty-one years.

Reservation

(4) Every exploratory licence of occupation is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the licensee. *New*.

Licence of occupation

101.—(1) The Minister may, subject to such conditions as the Minister considers proper, issue a licence of occupation permitting a specific use of surface or mining rights, or both, of Crown land.

Consent to transfer

(2) A licence issued under this section may be transferred only with the consent of the Minister.

Reservation

(3) Every licence of occupation is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the licensee. *New*.

Licences of occupation issued under previous Acts **102.**—(1) The application of this section is limited to licences of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, and licences of occupation issued without provision for an annual payment.

Rates for licence of occupation

(2) Notwithstanding the provisions in a licence of occupation, the annual rental payable in advance shall be as prescribed.

(3) Where a licence of occupation does not specify a date When annual for the payment of the annual rental, the annual rental shall be paid on the anniversary dates of the effective date of the licence.

MINING

(4) Where payment of the rental under a licence of occupation is in arrears for two years, the licence may be terminated occupation by the Minister.

(5) Where, subsequent to a termination under subsection Reinstatement (4), the Minister does not have notice of an interest that may be adversely affected thereby, he may, on such terms as he considers proper, reinstate a terminated licence.

(6) A licence may be transferred only with the consent of Consent to the Minister.

transfer of licence

(7) The Minister may issue a lease of such surface or mining rights as he considers appropriate to a licensee holding a licence of occupation who applies therefor in writing and surrenders his licence of occupation. R.S.O. 1980, c. 268, s. 44, amended.

103.—(1) Where a lease or a licence of occupation is held by co-lessees or co-licensees and one has not paid his proportionate share of the rent for the four years immediately preceding the application, the Commissioner, on the application of a co-lessee or co-licensee who has paid the rent during that period, may make an order requiring the delinquent co-lessee or co-licensee to pay, within three months after the date of the order or such longer time as the Commissioner may fix, his proportion of the rent to the person who has paid the rent together with interest at the prescribed rate compounded yearly or, in default of payment, vesting the interest of the delinquent co-lessee or co-licensee in the applicant.

Claim for payment by co-lessee or co-licensee

(2) For the purpose of this section, a corporation with share Interpretation capital and shareholders thereof are considered to be colessees or co-licensees, as the case may be. R.S.O. 1980, c. 268, s. 196, part, amended.

104. The Minister, in special circumstances and with the Special leases approval of the Lieutenant Governor in Council, may issue leases or patents relating to mining purposes, subject to such conditions as the Minister considers proper, to applicants who do not otherwise qualify for a lease or patent under this Act.

and patents

105. Where a lease is terminated before its term expires, Reinstatethe lessee may apply to the Minister to have the lease rein- of lease stated and, if there is nothing registered in the office of the

land registrar indicating an interest that would be adversely affected thereby, the Lieutenant Governor in Council, upon the recommendation of the Minister, may by order reinstate the lease for the remainder of the term and upon the order being registered in the proper land registry office, the lease is reinstated subject to all interests, liens and charges to which it had been subject immediately prior to the termination. *New*.

PART VI

SURFACE RIGHTS AND COMPENSATION FOR DAMAGE

Compensation for surface rights damage

- **106.**—(1) Every person who prospects, stakes a mining claim, performs assessment work or carries on mining operations on land,
 - (a) in respect of which surface rights have been patented or leased with reservation of mines, minerals or mining rights to the Crown; or
 - (b) that is legally occupied or used by a person who has made improvements thereon,

shall compensate the owner, lessee, occupant or user, as the case may be, for damages sustained by that person as a consequence of the prospecting, staking, assessment work or mining operations.

Exception

(2) Subsection (1) does not apply in respect of land for which a patent or lease of the mining rights has been issued before the disposition of the surface rights. *New*.

Claim holder compensation for damage **107.**—(1) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers establishing a mining claim shall compensate the claim holder for damages sustained.

Limited liability of occupier

(2) Every person who uses land pursuant to a grant made under subsection 89 (3) (where existing lease), subsection 100 (4) (where existing exploratory licence of occupation) or subsection 101 (3) (where existing licence of occupation) shall be deemed to have willingly assumed all risks and is subject to the duty of care set out in subsection 4 (1) of the *Occupiers' Liability Act*.

R.S.O. 1980, c. 322

Crown bound (3) This section applies to the Crown. New.

108.—(1) A person claiming compensation under section Compensation 106 or 107 may apply to the Commissioner for an order awarding compensation.

(2) Any lessee or licensee who objects, at any time, to a Limiting use grant made under subsection 89 (3), 100 (4) or 101 (3) may of surface rights apply to the Commissioner for an order revoking or amending the grant.

(3) Pursuant to an application under subsection (1), the Order by Commissioner may order compensation to be paid in the signer amount and manner that he considers proper.

- (4) Pursuant to an application under subsection (2), the Idem Commissioner may revoke or amend the grant.
- (5) In an order under this section, the Commissioner may Prohibiting order security to be given for payment of compensation and settlement may order the suspension of such prospecting, assessment work or mining operations or other use on or of the land as is specified in the order.

(6) An order under subsection (3) or (4) may be made, Order without notice, where the Commissioner is satisfied that irreparable damage would be caused through delay. R.S.O. 1980, c. 268, s. 92, amended.

109.—(1) The Commissioner, on an application being Right over made therefor, may make an order giving any person having conferred by an interest in or entitled to work mining rights, where it is Commisrequired for exploration or in connection with the proper working of a mine or a mill for treating ore,

- the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or on any land for the drainage, conveyance or passage of water;
- (b) the right to discharge water on any land or by, through or into any existing means of drainage, whether natural or artificial:
- (c) the right to drain off, lower or divert the water of any lake, pond, river, stream, watercourse or any other water notwithstanding that the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof:

MINING

- (d) the right to collect and dam water notwithstanding that it may overflow other land;
- (e) the right to make or divert and use for or in connection with the working of his own mine and bring thereto for such use any specified water and to construct and maintain dams and other works and do all other things necessary or convenient therefor;
- (f) rights-of-way or passage through or over any land or water and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water together with such other rights of entry upon and use of land and water as may be necessary or convenient therefor;
- (g) the right to transmit electricity or any other kind of power or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;
- (h) the right to enter on and use for or in connection with the working of his own mine, sand and gravel pit or peat deposit, a specified area of other land; or
- (i) the right to deposit tailings, slimes or other waste products upon any land or to discharge them into any water, if the effects of such deposit or discharge is not injurious to health.

Conditions for order

- (2) An order under subsection (1) shall not be made unless,
 - (a) all damage caused thereby can be adequately compensated for;
 - (b) in the circumstances it seems reasonable to grant the right; and
 - (c) where prior damage has been suffered, compensation has been determined by the Commissioner and paid.

Protecting land owners

- (3) In making an order under subsection (1), the Commissioner.
 - (a) shall fix appropriate compensation or provide for the ascertainment thereof:

- (b) shall set out such provisions as he considers adequate for securing and protecting the rights and interests of persons whose land is affected;
- (c) may require the applicant to make grants or concessions to persons whose land is affected or construct works or do any other act; and
- (d) may make the order subject to such other conditions as he considers proper.
- (4) Every applicant for an order under this section must Material to file, in duplicate, with the Commissioner,

be filed on application

- (a) a clear and precise statement of the rights applied for, the land affected and the owner thereof so far as can be ascertained:
- (b) a map or plan of the locality showing the land and water involved: and
- (c) definite and detailed plans and specifications of the works or things proposed to be constructed or done.
- (5) The Commissioner may authorize an applicant and his Authority to assistants to enter on the land of any other person to make such examinations and measurements as may be necessary for the purpose of subsection (4).

(6) Any statement, map or plan may be amended, altered Amending or modified at any stage of the proceeding pursuant to an order of the Commissioner.

(7) When making an order under subsection (5), the Com-Notice missioner may give directions as to the notice to be given to the persons interested, the time and manner of service and the particulars to be furnished to such persons.

(8) Subject to subsection (14), every person acquiring title Order to land affected by an order made under this section is bound on by the order and is entitled to all benefits given and is liable subsequent for all obligations imposed by the order to the same extent as if he were the owner of the land at the time the order was made.

(9) Subsection (8) applies in respect of land patented by the Idem Crown or sold by a municipality for unpaid taxes.

Description and plan of lands in order (10) Every order made under this section shall contain a proper registrable description of all land affected together with a plan of that land.

Copy to be filed or registered

(11) Every applicant obtaining an order under this section shall, where the land involved is unpatented, file a certified copy thereof in the recording office or where a patent or lease of the land involved has been issued, register a certified copy thereof in the proper land registry office.

Commissioner may change order

(12) The Commissioner, on such terms as he considers just, may by subsequent order, at any time, vary or rescind any order made under this section.

Rights not to be exercised until after expiration of time for appeal (13) Rights granted under an order made under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of.

Subsequent purchaser

(14) An order made under this section is not valid against a purchaser for value without notice of it.

Notice of hearing

(15) Notice of hearing of all applications under this section shall be given to the Minister, the Minister of Labour and the Minister of the Environment in the same manner as notice to any other interested person. R.S.O. 1980, c. 268, s. 189, amended.

PART VII

OUARRY PERMITS

Quarry permit required **110.**—(1) No person shall take quarry material, sand, gravel or peat that is the property of the Crown unless he does so pursuant to and in accordance with a quarry permit.

Idem

(2) No person shall take quarry material, sand, gravel or peat that are not the property of the Crown from a bed, bank, beach, shore or water of any lake, river, stream or creek or from any bar or flat in any lake, river or stream or adjoining any channel or entrance to a lake, river, stream or creek unless he does so pursuant to and in accordance with a quarry permit. R.S.O. 1980, c. 268, s. 118 (1), amended.

Permit issued by Minister **111.**—(1) The Minister may issue a quarry permit to any person who applies therefor and provides the information and material required by the Minister.

the opinion that,

issue permit

(2) The Minister may, where he is of the opinion that to Refusal to issue a quarry permit is contrary to the public interest, refuse to issue a quarry permit.

MINING

- (3) Every person who is precluded from taking quarry Entitlement material, sand, gravel or peat by subsection 110 (2) is entitled to be issued a permit by the Minister unless the Minister is of
 - taking the quarry material, sand, gravel or peat will likely,
 - (i) significantly impair or interfere with the natural state or use of waters or the value or use of property,
 - (ii) cause significant erosion of or accretion to land, or
 - (iii) create a threat to roads, rights-of-way, structures or installations or to health or safety;
 - (b) the equipment that is proposed to be used to take the quarry material, sand, gravel or peat is not suitable for the purpose.
- (4) Subject to subsection (5), a quarry permit may be Term issued for a term not exceeding five years.
- (5) Where the Minister is satisfied that an applicant for a Idem quarry permit requires the use of material in conjunction with the operation of a producing mine and that use will extend beyond five years, the Minister may issue the permit for a term exceeding five years.
- (6) No quarry permit shall be issued for sand and gravel Where no where the sand and gravel has been included in a mining claim be issued as a placer deposit.
- (7) Every quarry permit and the operations authorized by it Subject to are subject to such conditions, including rehabilitation, as are prescribed.
- (8) The Minister may, at any time, in writing, exclude the Exception application of any prescribed condition in respect of any quarry permit for such time as he may specify.
- (9) In addition to the prescribed conditions, the Minister Other may include in a quarry permit such conditions as the Minister considers advisable.

Renewal

- (10) A quarry permit,
 - (a) other than one issued under subsection (5), may be renewed for a term of not more than five years; or
 - (b) issued under subsection (5) may be renewed for such term as the Minister considers appropriate.

Area reduction

(11) Where a quarry permit is renewed, the renewed permit may cover a smaller area than the previous permit covered.

Transfer

(12) A quarry permit may be transferred only with the written consent of the Minister. R.S.O. 1980, c. 268, s. 118 (2-7), amended.

Classes of permits

112.—(1) A Class A Permit authorizes the taking of quarry material, sand, gravel or peat to be used for resale or commercial purposes or in conjunction with a commercial undertaking.

Idem

(2) A Class B Permit authorizes a municipality to take quarry material, sand, gravel or peat for use by the municipality but not for resale or commercial purposes.

Idem

(3) A Class C Permit authorizes an individual or a group of individuals to take quarry material, sand, gravel or peat for a use that is not for resale or a commercial purpose. *New*.

Cancellation, etc., of permit

- **113.** The Minister may suspend or cancel or may refuse to renew a quarry permit where,
 - (a) the permittee has contravened any provision of this Part or any of the conditions to which the permit is subject;
 - (b) in the opinion of the Minister, a substantial amount of quarry material, sand, gravel or peat has not been removed under the permit during a continuous period of more than one year; or
 - (c) he considers the continuation of operations under the permit to be contrary to the public interest. *New*.

Immediate suspension of operations

114. The Minister may direct, in writing, a permittee to immediately suspend operations under a quarry permit where, in the opinion of the Minister, the continuation of operations

under the permit is not in accordance with the permit and will likely cause damage or injury. R.S.O. 1980, c. 268, s. 119, part, amended.

MINING

115.—(1) Where the Minister,

Notice of decision

- (a) refuses to renew a quarry permit or to issue a quarry permit under subsection 111 (3);
- (b) cancels a quarry permit;
- (c) suspends a quarry permit or operations thereunder;
- (d) reduces the area covered by the permit,

the Minister shall notify the applicant or permittee, in writing, of his decision and the reasons therefor.

(2) A notice under subsection (1) shall state that the appli- Appeal cant, permittee or former permittee is entitled to appeal to the Commissioner if that person delivers a notice of appeal to the Commissioner within fifteen days after the notice is served upon him. New.

116.—(1) Where a permittee or former permittee appeals Right to a refusal to renew or a cancellation, suspension or reduction, operations he may continue to operate under the permit until the appeal is finally disposed of.

(2) This section does not apply where operations are sus- Exception pended under section 114. R.S.O. 1980, c. 268, s. 119, part, amended.

117.—(1) Every holder of a Class A or C Permit taking Royalty quarry material, sand, gravel or peat from Crown land shall pay the Treasurer of Ontario for the quarry material, sand, gravel or peat removed such royalty as the Minister may determine.

(2) In determining the royalty to be paid under subsection Factors (1), the Minister shall have regard to the location, type and determining payment accessibility of the deposit, the amount of quarry material, sand, gravel and peat to be removed and the intended use of the product.

(3) The Minister may vary the royalty payable when a Royalty on quarry permit is renewed.

Waiving payment

(4) Where quarry material, sand or gravel is used in the public interest, the Minister may, at any time, waive the royalty payment. R.S.O. 1980, c. 268, s. 120, part, amended.

Security as guarantee

118.—(1) The Minister may require a permittee to give security in the prescribed manner for the payment of the royalty and to guarantee rehabilitation of the quarry.

Rehabilitation (2) Where the permittee does not rehabilitate the quarry as required, the Minister may order the rehabilitation with the cost thereof to be paid out of the security.

Debt to Crown (3) If the amount of the security is not sufficient to cover a default in royalty payment or the cost of rehabilitation, the amount of the shortfall is a debt owing to the Crown by the permittee and is recoverable by the Crown in a court of competent jurisdiction. R.S.O. 1980, c. 268, s. 120, part, amended.

Records

119.—(1) Every permittee shall keep detailed records of his operations including copies of all documents relating to sales and shipments and shall make available for inspection by any person authorized for the purpose all the accounts, records and documents related to his operation of the quarry in respect of which the permit has been issued. R.S.O. 1980, c. 268, s. 121, amended.

Power to inspect

- (2) For the purpose of subsection (1), the Minister may authorize an inspector,
 - (a) to enter on any land in respect of which a quarry permit was issued or, during normal business hours, the business office of the permittee; or
 - (b) to board any vessel that appears to be used in relation to a quarry operation,

and the inspector is entitled to and shall be provided with access to all production and sales records and documents kept in relation to the operation of the quarry. R.S.O. 1980, c. 268, s. 122, amended.

Returns

- **120.** Where quarry material, sand, gravel or peat is removed from Crown land,
 - (a) under a Class A or C Permit, the permittee involved shall, unless otherwise directed by the Minister, make a return on or before the tenth day of each month showing the quantity of material

- removed during the preceding month accompanied by the required royalty payment; or
- (b) under a Class B Permit, the permittee shall make an annual return at the prescribed time showing the quantity of material removed during the preceding calendar year. R.S.O. 1980, c. 268, s. 123, amended.
- 121.—(1) The existence of a quarry permit does not pre-Right to clude a holder of a prospector's licence from staking a mining claim on the land covered by the permit but a mining claim staked on the land is subject to the rights of the permittee.

(2) Every quarry permit issued is subject to the rights of a Prior mining mining claim holder whose claim has been recorded before the permit is issued.

(3) Any dispute arising in respect of the application of sub-Reference to section (1) or (2) may be referred to the Commissioner by any sioner person having an interest therein and the Commissioner's decision in respect of the matter shall be final. R.S.O. 1980, c. 268, s. 124, amended.

PART VIII

HEARINGS AND APPEALS

122.—(1) The recorder shall, in the first instance, hear Recorder to and determine.

decide matter in first instance

- every question concerning compliance with this Act and the regulations in respect of a mining claim; and
- (b) every dispute in respect of a mining claim,

arising before an application for a lease of the claim is filed unless the recorder, with the consent of the Commissioner, transfers the question or dispute to the Commissioner for his decision. R.S.O. 1980, c. 268, s. 131 (2), amended.

(2) The recorder may give directions for the conduct and Directions as carrying on of a proceeding before him and, in so doing, he proceedings shall adopt the cheapest and simplest methods of determining the questions arising that afford all parties an adequate opportunity of knowing the issues in the proceeding, presenting material and making representations on their behalf.

Notation of recorder's

(3) The recorder shall enter in the records of the recording determination office a notation of every determination made by him. R.S.O. 1980, c. 268, s. 131, amended.

Appeal to Commissioner

123.—(1) Any person affected by a determination or act by a recorder, done or neglected or refused to be done under this Act, may appeal to the Commissioner.

Idem

(2) Where it appears to be in the public interest, the Director or Supervisor on his behalf may appeal to the Commissioner any determination of a recorder without payment of a fee.

Appeal instituted

- (3) Any person entitled to appeal to the Commissioner may do so by,
 - filing a notice in the office of the appropriate recorder; and
 - (b) serving a copy of the notice on all parties,

within fifteen days after the entry of the decision on the record or the doing or refusing to do the act that is the subjectmatter of the appeal.

Idem

(4) The fifteen day limit referred to in subsection (3) does not apply where the appeal is in respect of an act neglected to be done.

Extension of time

(5) The Commissioner may extend the time for filing notice under clause (3) (a) for a period of not more than fifteen days and the time for service under clause (3) (b) for such period as seems reasonable in the circumstances.

Substitute service

(6) Where service under clause (3) (b) cannot be made without undue difficulty, the Commissioner may make such order for substitutional service as he considers just. 1980, c. 268, s. 133, amended.

Hearing by Commissioner

- **124.**—(1) The Commissioner shall hold a hearing in respect of,
 - (a) every matter, within his jurisdiction, referred to him under this Act; and
 - (b) every appeal to him that is permitted under this Act. R.S.O. 1980, c. 268, s. 134, amended.

Time for hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possible allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall not be held less than ten days after service of the notice of the hearing on the parties.

(3) The Commissioner shall select as the place for a hearing Place for such place as he considers most convenient for the parties in the county or district or one of the counties or districts in which the land affected is situate unless it appears desirable that the hearing should be in some other county or district. R.S.O. 1980, c. 268, s. 135, part, amended.

125. The Commissioner may hear and dispose of any Interlocutory application not involving the final determination of the proceeding, either without notice or on notice, at any place he considers convenient and his decision on any such application is final but, where the Commissioner makes his decision without notice, he may subsequently reconsider and amend the decision. R.S.O. 1980, c. 268, s. 138, amended.

applications

126.—(1) The Commissioner may,

Directions of Commissioner proceedings

- (a) give directions for having any matter heard and re decided without unnecessary formality;
- order the filing or serving of statements, particulars, objections or answers, the production of documents and things and the making of amendments;
- (c) order discoveries and examinations on affidavits;
- (d) give such other directions respecting the procedure and hearing as he considers proper; and
- (e) order or allow such substituted or other service as he considers proper.
- (2) The Commissioner may take or order the evidence of Taking of any witness to be taken at any place in or out of Ontario. R.S.O. 1980, c. 268, s. 137, amended.

127. The Commissioner may obtain the assistance of Expert experts who may, under his order, view and examine the property in question and, in giving his decision, he may give such weight to their opinion or report as he considers proper. R.S.O. 1980, c. 268, s. 139, amended.

128.—(1) The Commissioner, in addition to hearing evi-Commisdence adduced by parties, may, in any matter before him, may call for require and receive such other evidence as he considers evidence and

proper and may view and examine the property in question and give his decision upon such evidence or view and examination or may appoint a person to make an inspection of the property and may receive as evidence and act on the report of the person so appointed.

Statement of view or special knowledge (2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by him, he shall state, in writing, those matters that he took into account so as to enable a judgment to be formed of the weight that should be given thereto.

View only

(3) Where the parties consent, in writing, the Commissioner may proceed wholly on a view and, in that case, his decision is final. R.S.O. 1980, c. 268, s. 140, amended.

Disclosure of evidence to parties

129. Where the Commissioner receives any opinion, report or evidence under section 127 or 128 in any proceeding before him, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. R.S.O. 1980, c. 268, s. 141.

Decision on the merits **130.** The Commissioner shall give his decision upon the real merits and substantial justice of the case. R.S.O. 1980, c. 268, s. 142.

Security for costs **131.** Where the Commissioner considers a proceeding vexatious or where it is brought by a person residing out of Ontario, he may order that such security for costs as he considers proper be given and that in default of the security being given within the time specified or in default of speedy prosecution the proceeding be dismissed. R.S.O. 1980, c. 268, s. 143.

Costs

132.—(1) The Commissioner may, in his discretion, award costs to any party and may direct that the costs be assessed by the local registrar of the District Court or by one of the assessment officers at Toronto or may order that a lump sum be paid in lieu of taxed costs. R.S.O. 1980, c. 268, s. 147.

Counsel

(2) The Commissioner has the same powers as an assessment officer of the Supreme Court with respect to counsel fees. R.S.O. 1980, c. 268, s. 148, amended.

Oral decisions R.S.O. 1980, c. 484 **133.** Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the Commissioner may render an oral decision with oral reasons. *New*.

134.—(1) Where the Commissioner makes an order, it Orders to shall be written but need not show upon its face that in any proceeding, notice was had or given or that any circumstances existed necessary to give jurisdiction to make the order.

(2) Every order of the Commissioner, with the exhibits, the Document to statement, if any, of view or of special knowledge or skills and be filed and recorded the reasons for his decision shall be filed in the appropriate recording office and the recorder shall record and give notice of the filing to the solicitors of the parties appearing by solicitor and to parties not represented by a solicitor. R.S.O. 1980, c. 268, s. 150, amended.

135. Where not otherwise provided, an appeal lies to the Appeal to Divisional Divisional Court from any decision of the Commissioner. Court R.S.O. 1980, c. 268, s. 154.

136. Where the hearing is to be held at a place where a Use of court court house is situate, the Commissioner has the right to use the court room, and where the hearing is to take place in a municipality in which there is a hall belonging to the municipality, but no court room, he has the right to use the hall. R.S.O. 1980, c. 268, s. 144.

137. The evidence taken before the Commissioner shall be Recording recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court. R.S.O. 1980, c. 268, s. 146.

of evidence

138.—(1) Any party in a proceeding before the Commis-Notice of sioner concerning an interest in mining rights is entitled to obtain from the Commissioner a notice of interest.

(2) Every recorder who receives a notice of interest shall Recording of record the notice on the record of the mining claim involved interest and send a copy of it, by prepaid mail, to every recorded holder of an interest in the mining rights involved. R.S.O. 1980, c. 268, s. 75, part, amended.

notice of

139. The Commissioner may direct a recorder to, or the Notice that recorder, on his own initiative, may record on the record of question any mining claim a notice that the status of the claim is in question. R.S.O. 1980, c. 268, s. 75, part, amended.

140. Upon a notice being recorded under section 139, all Effect of time requirements under this Act or regulations as to performing and recording work in respect of the mining claim involved are suspended and do not begin to run until a revocation of the notice has been recorded. New.

Order vacating

141.—(1) Any person with an interest in a mining claim in respect of which a notice is recorded under section 138 or 139, may at any time, apply to the Commissioner for an order vacating the notice.

Notice of order vacating

(2) Every recorder who receives an order to vacate a notice shall send, by prepaid mail, a copy of the order to every recorded holder of an interest in the mining claim involved and shall record it on the record of the mining claim involved. R.S.O. 1980, c. 268, s. 75, amended.

PART IX

HAZARDOUS LANDS

Definitions

142. In this Part.

"lien" includes a lien created under section 161 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, or a predecessor of that section;

"owner", when referring to the owner of a mine, means a person holding a freehold or leasehold interest in the mining rights in respect of land in, on or under which is situate a mine or any part thereof and includes a person who is a holder of a licence of occupation issued under this Act or a predecessor of this Act in respect of such land;

1984, c. 13

"professional engineer" means a person licensed as a professional engineer under the *Professional Engineers Act*, 1984;

"registered" means,

R.S.O. 1980, cc. 230, 445

- (a) registered under the Land Titles Act or the Registry Act, or
- (b) in the case of land held under a licence of occupation, deposited at the office of the Minister,

and "register" has the corresponding meaning. New.

District mine inspector

143.—(1) The Minister may designate, in writing, any employee of the Crown as a district mine inspector.

Powers of district mine inspector

- (2) For the purpose of carrying out his duties and exercising his powers under this Part, a district mine inspector may,
 - (a) enter in or on any land or business premises at any reasonable time without notice or warrant;

(b) make such investigations as he considers necessary in order to determine the nature and extent of any existing or potential hazards;

MINING

1986

- (c) require the production of any drawings, specifications, licence, document, record or report and inspect, examine and copy the same;
- (d) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return them to the person who produced or furnished them:
- (e) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any persons having special, expert or professional knowledge of any matter, take photographs and take with him and use any equipment or materials required for the purpose; and
- authorize entry in or on any land or business prem-(f) ises without warrant by any person for the purpose of performing work ordered under section 147 (protective measures by Minister). New.

144. Every owner of a mine, the operation of which is Protective permanently or temporarily discontinued, shall take all necessary protective measures at the mine to prevent personal injury or property damage that is reasonably foreseeable as a result of the mine's existence. New.

145.—(1) Where, in the opinion of the Minister, the oper- Designation ation of a mine is discontinued, he may designate the mine as mine an inactive mine and shall register notice of his designation.

(2) Where the Minister designates a mine as an inactive Notice to mine, he shall serve notice of the designation on the owner of the mine and, where the owner of the land in, on or under which the mine is situate, is a different person, on that person.

(3) Every person served with a notice under this section is Notice entitled to a hearing by the Commissioner if he serves the hearing Commissioner and Minister with notice, within thirty days after being served with a notice of the designation, that he requires a hearing in respect of the designation.

Minister is party

(4) The Minister is entitled to be a party to every hearing held in respect of an inactive mine designation.

MINING

Decision by Commissioner (5) The Commissioner, at the conclusion of the hearing, shall confirm or rescind the designation made by the Minister.

Designation revoked

(6) Where the Commissioner rescinds a designation of the Minister, the Minister shall, forthwith, register notice of the rescission and thereupon the designation made by the Minister is revoked. *New*.

Direction to take protective measures **146.**—(1) A district mine inspector, where he is of the opinion that protective measures should be taken or that measures taken are no longer adequate or appropriate, may by order direct the owner of an inactive mine to take the measures specified in the order within the period specified in the order.

Revocation of order

(2) The registration of a notice of rescission under subsection 145 (6) revokes every order under this section in respect of the mine involved made prior to the registration. *New*.

Protective measures by Minister **147.**—(1) Where an order of the district mine inspector is not complied with, the Minister may cause the ordered protective measures to be taken and shall pay the cost incurred.

Protective measures for immediate hazards (2) Where, in the opinion of a district mine inspector, an inactive mine constitutes an immediate hazard to persons or property, the district mine inspector may cause such protective measures as he considers necessary to be taken and the Minister shall pay the costs incurred.

Recovery of

(3) Unless the Commissioner determines that it was not necessary to incur them, costs paid under subsection (1) or (2) or such other amount as may be determined by the Commissioner, including interest thereon at the prescribed rate, are a debt due to the Crown by the owner of the mine at the time the costs were incurred and are recoverable by the Crown in a court of competent jurisdiction.

Application to Commissioner

(4) Any person liable for costs under this section may apply to the Commissioner to determine whether it was necessary to incur the costs and, if so, the amount that it was necessary to incur.

Lien

(5) Costs referred to in subsection (3), including interest thereon at the prescribed rate, are a lien upon mining rights and surface rights used in conjunction with the mine and all adjoining mining rights and surface rights owned by the owner of the mine and the Minister may register notice of the lien.

(6) Upon notice of a lien being registered under this sec-Transfer tion, the rights subject to the lien shall not be transferred and any purported transfer in contravention of this subsection is void.

- (7) The Minister, on such conditions as he considers prop- Idem er, may register,
 - (a) a postponement of lien and, on registration, the lien is suspended for the period and in accordance with the conditions therein described; or
 - (b) a cessation of lien.
- (8) A lien under this section may be realized by the sale of Realization any or all of the interests subject to it.
- 148. No person shall alter any protective measures taken Retaining protection in accordance with this Part except with the prior written consent of the Minister. New.
- 149. Where protective measures ordered under this Part Certificate are done, the Minister, on request, shall provide a certificate requirements stating that the requirements of this section have been com- met plied with to the date of the certificate and the certificate may be registered. New.

150.—(1) The Minister may designate any land as limited Designation use land where, in his opinion, use of the land for purposes as limited use land other than mining is potentially hazardous.

(2) Where the Minister proposes to designate land as lim- Notice of ited use land, he shall serve notice of his proposal on every person appearing in the records of the land registry office as having an interest in the surface rights and shall register notice of his proposed designation.

(3) Where the Minister registers notice of a proposed designation, he may make public any relevant information obtained from a mine plan submitted under this Act or a predecessor of this Act.

disclosure

(4) Every person who is served with a notice under subsec-Notice tion (2) is entitled to a hearing by the Commissioner if he serves the Commissioner and Minister with notice requiring a hearing, within thirty days after being served with a notice under subsection (2).

(5) If a notice requiring a hearing is not served as set out in Minister may subsection (4) or after a hearing the Commissioner determines no hearing

designate if required

that the proposal should proceed, the Minister may designate the land as limited use land and, where he does so, shall register the designation forthwith.

Subsequent right to require a hearing (6) Where a designation is made under subsection (5), any person with an interest in the surface rights of the land involved may, at any time, require a hearing by serving the Commissioner and Minister with notice to that effect.

Approved studies and tests

(7) Any person who requires a hearing under subsection (4) or (6) may submit to the Minister a plan for the performance of studies and tests to determine the existence and exact location of mine workings underlying the land and the condition of the rock between the mine workings and the surface and, if the Minister approves, that person may carry out the studies and tests.

Revocation of designation

(8) Where, on the basis of studies and tests done under subsection (7) the Minister determines, or, after a hearing the Commissioner determines, that the land should not be designated as limited use land, the Minister shall forthwith register revocation of the notice of the proposed designation or of the designation, as is appropriate.

Reimbursement for costs (9) Where a revocation is registered, the Minister shall reimburse the person who paid for any studies and tests used in arriving at a determination, the cost thereof. *New*.

Limited use land restrictions

- **151.**—(1) No person who has an interest in the surface rights of land designated as limited use land shall cause or allow.
 - (a) any change in the existing use of the land;
 - (b) any addition to an existing structure or building located on the land; or
 - (c) the construction of a structure or building on the land,

without the prior written approval of the Minister.

Minister may require reports (2) Where the Minister receives a request for approval under subsection (1), he may require such reports as he considers necessary, including a report from a professional engineer, setting out such particulars as he needs to make a decision. *New*.

Examination of documentary evidence

152. Where the Commissioner holds a hearing under this Part, the person requiring the hearing may examine, before

the hearing, any written evidence that will be produced and any report, the contents of which will be given in evidence at the hearing. New.

153. A designation under this Part is not a regulation Designation under the Regulations Act. New.

regulation under R.S.O. 1980, c. 446

154.—(1) Every person who contravenes any provision of Offence this Part is guilty of an offence and, on conviction, is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three months or to both.

(2) Where the Minister has given written notice to a person Additional that there is a contravention of any provision in this Part, that continuing person, on conviction, is liable to a further fine of not more offence than \$100 for every day that the offence continues after the notice.

(3) Where, in committing an offence under this Part, a per- Imprisonment son does or neglects to do any act, the commission or neglect of which could reasonably be foreseen as endangering the safety of any person, the offending person is liable, in addition to any other penalty under this Act, to imprisonment for a term of not more than three months. R.S.O. 1980, c. 268, s. 176, amended.

PART X

MINING LAND TAX

155. In this Part,

Definitions

"municipality" means a city, town, village, township or county, the inhabitants of which are a body corporate within the meaning and for the purposes of the Municipal Act and R.S.O. 1980, includes an improvement district, district municipality and regional municipality and The Municipality of Metropolitan Toronto:

"tax" means a tax under this Part. R.S.O. 1980, c. 268, s. 201, amended.

156. Except as provided in this Part,

Liability for tax

all patented land in territory without municipal organization granted, held or used for mining purposes;

- (b) all mining rights in, on or under patented land in a municipality granted, held or used for mining purposes; and
- (c) all mining rights in, on or under patented land that are severed or held separate from the surface rights,

are subject to tax and the owner shall pay the prescribed annual tax on or before the 15th day of March in the year in which it is imposed. R.S.O. 1980, c. 268, s. 204, amended.

Exemptions from tax by Minister

157.—(1) The Minister may exempt land or mining rights from the tax where,

- (a) the land is subdivided by a registered plan or reference plan into lots or parcels for city, town, village or summer resort purposes;
- (b) the land is being used for a public park or cemetery or for educational or religious purposes;
- (c) the land is in *bona fide* use for farming or other agricultural purposes; or
- (d) the mining rights in, on or under land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, that are held, used or developed solely for the production of natural gas or petroleum. R.S.O. 1980, c. 268, s. 205 (1), amended.

Idem

(2) Where the mining rights that were not subject to tax become subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such time as he is satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1980, c. 268, s. 218 (2), amended.

Where mining rights taxable only

(3) Where the Minister is satisfied that the surface rights of land referred to in clause 156 (a) are being used for purposes other than that of mining or the mining industry, he may exempt the surface rights from the tax. R.S.O. 1980, c. 268, s. 206, amended.

Decision final (4) An exemption by the Minister under this section is final but the Minister may reconsider his decision where the circumstances on which he based his decision change. R.S.O. 1980, c. 268, s. 205 (2), amended.

- 158. The Minister shall have an annual tax roll prepared Tax roll showing the land and mining rights subject to tax. R.S.O. 1980, c. 268, s. 207, amended.
- **159.** The Minister may register in the proper land registry of notice of notice of liability to taxation in respect of any land or liability mining rights subject to tax. R.S.O. 1980, c. 268, s. 208, amended.

MINING

160.—(1) Any person may apply to the Commissioner to Determining determine whether he is liable to pay tax or to determine the for tax amount of tax payable, as the case may be.

(2) The Minister may refer to the Commissioner any question as to whether any land or mining rights are wrongfully tax roll omitted from the tax roll.

(3) The Minister is a party to every proceeding before the Minister to Commissioner under this section. R.S.O. 1980, c. 268, s. 210, amended.

161. Where tax is unpaid on the 15th day of March in the Penalty for year in which it is payable, a penalty at the prescribed rate together with prescribed costs, where applicable, shall be added thereto, accumulating annually thereafter on any part that remains unpaid and, for all purposes, the amount of the tax and penalty are considered to be the tax due and payable under this Part. R.S.O. 1980, c. 268, s. 215, amended.

162. All arrears of acreage tax and penalties under a pre-Arrears decessor of this Act are arrears of tax for the purpose of this previous Act Part. New.

163.—(1) All tax, penalties and costs payable under this Special lien Part constitute a special lien on the land or mining rights of the tax against which the tax is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right of that person has accrued before or after the attaching of the special lien.

- (2) The priority of a special lien is not lost by any omission, Idem error or failure to register.
- Realization (3) A special lien may be realized by the sale of any or all property subject to it. R.S.O. 1980, c. 268, s. 216, amended.
- 164. If the tax levied on any land or mining rights is not Right of paid when due, the Minister may apply to a court of competent jurisdiction for recovery of the tax together with penalties and costs. R.S.O. 1980, c. 268, s. 217, amended.

action for tax

Tax arrears

165.—(1) Where tax in respect of land or mining rights is two years in arrears, the Minister may send notice of the arrears to every person who appears, from the land registry office records, to have an interest in the land or rights, addressed to that person at the address shown for that person in the land registry office records or such latter address as is known to the Minister.

Who may pay

(2) Any person who receives a notice under subsection (1) may pay the taxes outstanding. R.S.O. 1980, c. 268, s. 212, part, amended.

Declaration of forfeiture

166.—(1) Where any taxes, penalties or costs remain unpaid six months after the notice of arrears has been sent, the Minister may order all interest in land or mining rights in respect of which the default exists forfeited.

Registration of certificate

(2) Upon a certificate of forfeiture being registered, all interest in the land or mining rights described in the certificate is forfeited to the Crown.

Registration conclusive

(3) Registration of a certificate of forfeiture is conclusive evidence of the forfeiture to and vesting in the Crown of the interest in the land or mining rights described therein notwithstanding any defect or omission.

Cancelling forfeit

(4) The Minister may order the cancellation of the forfeiture and where he does so, shall issue a certificate of cancellation of forfeiture. R.S.O. 1980, c. 268, s. 212, part, amended.

Claim for tax payment by co-owner

167.—(1) Where an interest in land or mining rights subject to tax is held by co-owners and one co-owner has not paid his proportionate share of the tax for the four years immediately preceding the application, the Commissioner, on the application of a co-owner who has paid the tax, may make an order requiring the delinquent co-owner to pay, within three months after the date of the order or such further time as the Commissioner may fix, his proportion of the tax to the co-owner who has paid the tax together with interest at the prescribed rate compounded yearly or, in default of payment, vesting the interest of the delinquent co-owner in the applicant.

Interpretation

(2) For the purpose of this section, a corporation with share capital and shareholders thereof are considered to be co-owners. R.S.O. 1980, c. 268, s. 211, part, amended.

PART XI

REFINERIES

168. In this Part,

Definitions

- "precious metal" means silver, gold, platinum, palladium, rhodium, iridium, ruthenium, osmium and alloys and partially refined metal containing one or more of these metals;
- "refinery" means apparatus or equipment, including ancillary equipment, fluxes and reactants, that may be used for refining, retorting, smelting, assaying or treating of mineral, partially refined metal, alloy, metallic scrap, jewellery or other substance for the purpose of recovering therefrom or of determining the quantity therein of any precious metal, but not including,
 - (a) equipment or apparatus for effecting the physical separation of finely divided precious metal from naturally occuring unconsolidated deposits of sand or gravel if operated by a licensed prospector or his agent during prospecting or evaluation of a deposit, or
 - (b) equipment or instruments for determining or estimating the precious metal content of a sample by technical methods that do not result in the separation of the precious metal from the ore or substance constituting the sample. R.S.O. 1980, c. 268, s. 164, amended.
- **169.**—(1) Subject to subsection (2), no person shall have a Refinery refinery in his possession or under his control or on land of required which he is the owner, licensee, lessee or tenant unless there is a refinery licence for that refinery.

- (2) A refinery licence is not required for a refinery for Exception which a certificate of exemption has been issued. R.S.O. 1980, c. 268, s. 165, amended.
- **170.**—(1) The Minister may issue a refinery licence to any Issue of refinery person who applies therefor. licence
- (2) The Minister may issue a certificate of exemption in Certificate of exemption respect of a refinery where he is satisfied that the refinery,
 - (a) shall not be maintained or used for refining, retorting, smelting, assaying or treating an ore, mineral or substance for the purpose of recovering there-

from or determining the quantity therein of any precious metal; or

(b) shall be used for educational purposes only.

Refusal to issue, etc.

(3) The Minister may refuse to issue or to renew a refinery licence or a certificate of exemption or may cancel a refinery licence or certificate of exemption where he considers it in the public interest to do so.

Term of licence and certificate of exemption (4) Every refinery licence and certificate of exemption expires on the 31st day of March next following the issue thereof. R.S.O. 1980, c. 268, ss. 166, 168, part, amended.

Reference to Commissioner for hearing and report **171.**—(1) Where the Minister proposes to refuse to issue or renew or to cancel a refinery licence or certificate of exemption, he shall refer the matter to the Commissioner.

Report

- (2) Where a matter has been referred to him under subsection (1), the Commissioner shall make a report to the Minister setting out,
 - (a) his findings of fact and all information or knowledge used by him in reaching his recommendations;
 - (b) any conclusions of law he has arrived at relevant to his recommendations; and
 - (c) his recommendations concerning the issue, renewal or cancellation, as the case may be,

and shall send a copy of his report to the person to whom it relates.

Decision of Minister (3) After considering the Commissioner's report, the Minister shall make his decision concerning the issue, renewal or cancellation and shall notify the applicant, licensee or certificate holder of his decision and the reason therefor and the Minister's decision in this respect is final. R.S.O. 1980, c. 268, s. 167, amended.

Use of refinery

172. No person who has under his control a refinery in respect of which there is a certificate of exemption shall permit the refinery to be used for refining, retorting, smelting, assaying or treating of any mineral or substance for the purpose of recovering therefrom or determining the quantity therein of any precious metal. R.S.O. 1980, c. 268, s. 168 (2), amended.

1986

173. The Minister may direct the Commissioner to con-Inquiry by duct an inquiry into a charge that a person has contravened a sioner provision of this Part and the Commissioner, for the purposes of the inquiry, has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the inquiry R.S.O. 1980, as if it were an inquiry under that Act. R.S.O. 1980, c. 268, s. 171, amended.

MINING

174. Every person who contravenes any provision of this Penalty Part is guilty of an offence and, on conviction, is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1980, c. 268, s. 169, amended.

PART XII

GENERAL

175.—(1) The Construction Lien Act, 1983 applies to min-Lien for ing claims, mining land and works connected with either but does not apply to quarries.

application of 1983, c. 6

(2) Where the mining rights in Crown land are recorded as Registration a mining claim, the registration provided for in the recorder Construction Lien Act, 1983 shall be in the recording office.

(3) Where a licence of occupation or an exploratory licence Registration of occupation has been issued, the registration provided for in with Minister the Construction Lien Act, 1983 shall be in the office of the Minister.

(4) Where the action is for wages in connection with mining Lien where land, a mining claim or works connected with either, in addition to the rights and remedies afforded by the Construction Lien Act, 1983, the claimant has a lien on all other property of the holder of the freehold or leasehold interest in the mining land or of the mining claim holder that is in, on or under the land involved for a sum not exceeding thirty days wages and this claim may be enforced under this Act.

(5) Where the Commissioner is satisfied that a claim for a Cancellation lien recorded under this section is not made in good faith or is made for some improper purpose or where the owner or holder is unduly embarrassed thereby, he may make an order cancelling the lien upon such terms as to security as he considers proper.

(6) A lien does not affect the rights of the Crown. R.S.O. 1980, c. 268, s. 185, amended.

Rights of

Corporate land forfeited to Crown on dissolution

176.—(1) Where a corporation is dissolved, all interests in mining land or mining rights of the corporation that have not been disposed of at the date of its dissolution are, notwith-standing anything in any other Act, thereupon forfeited to and vested in the Crown, free from every right, title, interest or claim therein or thereto.

Where 1982, c. 4, s. 243 (2) does not apply (2) Subsection 243 (2) of the *Business Corporations Act*, 1982 does not apply and shall be deemed to never have applied to interests in mining land and mining rights. *New*.

Lands and easements revert to Crown 177. Where under this Act a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1980, c. 268, s. 219.

Administration of reverted land or rights

178. Where freehold or leasehold interest in mining land or mining rights reverts, other than by transfer, to the Crown, the land or rights may be dealt with as unpatented Crown land under any Act administered by the Minister. R.S.O. 1980, c. 268, s. 195, *amended*.

Interpretation

179.—(1) In this section, "highway" includes road allowance. R.S.O. 1980, c. 268, s. 197, *amended*.

Mineral rights under roads

(2) The corporation of any municipality in that part of Ontario lying south of the French River, Lake Nipissing and the River Mattawa, may sell or lease the right to take minerals found on or under any highway over which the municipality has jurisdiction.

In northern part of Province

(3) In the parts of Ontario not described in subsection (2), the mining rights in, on or under highways are vested in the Crown and may be disposed of under this Act.

Notice requirement

(4) No sale or lease under subsection (2) may take place until after notice of the intended by-law authorizing the sale or lease has been posted in six public places in the neighbourhood of the highway for at least one month before the time set for considering the by-law.

Rights of adjoining land owners

(5) Where mining land adjoins a highway and the mineral vein or deposit thereon extends into or under the highway, its owner has the right to purchase or lease the mining rights in, on or under the highway subject to this Act or, where there are mining lands on both sides of a highway, the right to purchase or lease accrues to the owner on each side thereof in respect of the half of the highway adjoining his land.

(6) Every conveyance or lease under this section is subject Right to to the condition that the right of the public to travel over the travel highway will not be interfered with unless a comparable sub-preserved stituted road is provided by the grantee or lessee.

MINING

(7) Subsections (4) and (5) do not apply to highways on Exception land granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act or by a grant wherein the mines and minerals were not reserved to the Crown. New.

180.—(1) Every owner of mining land on or under which Statistical is situated a mine, plant, quarry or other works, including brine wells and storage facilities, on or before the 31st day of March in every year, shall send to the Minister, on forms supplied by the Ministry, a correct return for the year that ended on the 31st day of December immediately preceding, showing,

- (a) the number of persons ordinarily employed below and above ground respectively;
- (b) the total amount of wages paid during the year;
- the quantity, in standard weight, of the minerals processed and of the salt, peat, sand, gravel or unprocessed mineral that has been sold, treated or used during the year and the value or estimated value thereof; and
- (d) such other particulars as are prescribed.
- (2) If required by the Minister, an owner of land on or Monthly or under which is situate an operating mine from which minerals returns are being removed shall make a monthly or quarterly return providing the information required under subsection (1).

(3) Every person who fails to comply with subsection (1) or False return, a requirement of the Minister under subsection (2) or makes a return that is, to his knowledge, false in any particular is guilty of an offence and, on conviction, is liable to a fine of not more than \$1,000. R.S.O. 1980, c. 268, s. 163, amended.

181.—(1) All interests in mining land or mining rights patented, leased or otherwise disposed of are subject to the confined in Canada dition that all minerals therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment.

(2) Where there is a contravention of the condition set out Order in in subsection (1), the Lieutenant Governor in Council, by

order in council, may declare the interest in the mining land or mining rights forfeited to the Crown.

Rights vest in Crown (3) On an order in council made under subsection (2) being registered in the proper land registry office or, in the case of a licence of occupation, deposited in the office of the Minister, the interest described therein reverts to and becomes vested in the Crown free from every interest or claim.

Determination by Minister (4) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

Exemptions

(5) The Lieutenant Governor in Council may exempt any mining land or mining rights from the operation of this section for such period of time and subject to such conditions as the Lieutenant Governor in Council considers proper. R.S.O. 1980, c. 268, s. 104, amended.

Conditions under which trees may be cut **182.**—(1) A holder of a mining claim or of a lease may, with the permission of the Minister and subject to such conditions and payment of fees as the Minister considers reasonable, cut trees on the land involved as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon.

Idem

(2) The Minister, where there is a licence or permit from the Crown to cut timber on land that is subject to a mining claim or a lease of mining rights, may grant the holder of the claim or lease permission to cut trees on condition that he compensate the timber licensee or permittee for the trees cut.

Determination of disputes (3) Where a dispute arises as to the value or quantity of the trees cut pursuant to permission given by the Minister, the Minister shall determine the dispute and his decision is final. R.S.O. 1980, c. 268, s. 105, part, amended.

Right to remove property

183.—(1) Any person who has buildings, structures, machinery, chattels, personal property or minerals he has extracted therefrom including minerals in the form of slimes or tailings on land in respect of which mining rights were abandoned, surrendered, cancelled or forfeited, may within six months after the abandonment, surrender, cancellation or forfeiture or within such further time as is fixed by the Commissioner, remove them and, in default of so doing, everything not removed vests in the Crown.

(2) Subsection (1) does not apply to permit minerals, Exception including slimes and tailings to be taken from a mining claim referred to in subsection (1) that had not been patented. R.S.O. 1980, c. 268, s. 64, amended.

184.—(1) Every person who drills or causes drilling to be Drill core done on an unpatented mining claim or on patented lands to be kept where assessment work credits are filed on adjoining unpatented claims shall store, in containers held in accordance with subsection (2), all drill core and splits obtained.

(2) The containers shall be clearly labelled as to claim num- Containers ber, hole number and depth interval of drill runs and stored in sequence of content recovery.

(3) Every person who stores drill core and splits under sub- Notifying section (1) shall notify the Minister, in writing, of the place where the containers are stored together with a description of the drill hole locations.

(4) No person shall,

Drill core not to be destroyed

- (a) intentionally abandon, discard, dump, destroy or otherwise reduce the technical value of drill core; or
- (b) remove from Ontario any drill core,

without the permission of the Minister.

(5) Where permission required under subsection (4) is Permission requested, the Minister shall have twelve months in which to examine or selectively sample the core and where the Minister does not, within twelve months after the request, refuse permission, permission shall be deemed to have been given.

(6) Clause (4) (a) does not apply to drill hole sections sub- Exception mitted for assaying or testing or microscopic, metallurgical and beneficiation studies.

(7) Where complete destructive testing of exploration drill Test results core is performed, a log of the rock descriptions shall be submitted to the Minister by the holder of the mining claim involved. New.

185.—(1) Where land used for the impoundment of tail- Stabilization ings ceases to be so used, the owner of the mine involved shall plant and maintain vegetation or otherwise stabilize the tailings area.

Stabilization plans

(2) Every owner of a mine who uses land for tailings shall keep at the mine site and shall turn over for inspection to any inspector who asks to see the plan, a stabilization plan showing the nature, location and extent of all stabilization that has been completed and that is proposed.

Security

(3) The Minister may require any owner to whom this section applies to give security in the prescribed manner to guarantee stabilization required under subsection (1).

Stabilization

(4) Where a mine owner does not comply with subsection (1), the Minister may order the stabilization to be done with the cost thereof to be paid out of the security.

Debt to Crown (5) If the amount of security given under subsection (3) is not sufficient to cover the cost of rehabilitation, the amount of the shortfall is a debt owing to the Crown by the owner of the mine and is recoverable by the Crown in a court of competent jurisdiction.

Definition

(6) In this section, "owner" has the same meaning as in Part IX. New.

Offences

186. Every person who,

- (a) defaces, alters, removes or disturbs any post, tag, stake, picket, boundary line, figure, working or other mark properly placed, standing or made under this Act or the regulations or a predecessor of this Act or regulations under that Act;
- (b) wilfully obstructs any person in the execution of his duty under this Act;
- (c) does not rehabilitate a quarry in accordance with the regulations;
- (d) does not allow the Commissioner, a person appointed by him or an inspector the necessary means to make an entry, inspection, examination or inquiry in relation to a mining claim or a quarry;
- (e) obstructs a person in the exercise of a right granted under an order made under this Act;
- (f) removes minerals, quarry material or other materials including clay and earth without authority;
- (g) makes a material change in the wording or numbering of a prospector's licence after its issue;

- (h) makes a false statement in an application, certificate, report, statement or other document filed, deposited or made under this Act or the regulations;
- (i) does not obey an order of the Commissioner or recorder made under this Act; or
- (j) contravenes any provision of this Act or any regulation for the contravention of which no other penalty is provided,

is guilty of an offence and, on conviction, is liable to a fine of not more than \$10,000. R.S.O. 1980, c. 268, s. 172, amended.

- **187.** No prosecution may be instituted for an offence Prosecutions against this Act except,
 - (a) by or by leave of the Minister, Commissioner, Director or the recorder; or
 - (b) by direction of the county or district Crown Attorney. R.S.O. 1980, c. 268, s. 177 (1), amended.
- **188.**—(1) The Lieutenant Governor in Council may make Regulations regulations,
 - 1. prescribing forms and providing for their use;
 - 2. requiring the payment of fees to the Minister, Commissioner and recorders and prescribing the amounts thereof;
 - 3. prescribing and governing the method of staking mining claims and creating exceptions respecting irregular areas, the shape, size and area of mining claims in unsubdivided areas and subdivided townships, the standards and inscriptions of claim posts and tags and the blazing or alternative method of identifying boundary lines and prohibiting the use of used posts or material and by sketches illustrating such matters;
 - 4. prescribing information to be shown on applications;
 - 5. prescribing information to be shown on sketches or plans accompanying applications;

- 6. governing the use and expiry of tags;
- 7. defining, establishing and limiting types of assessment work, prescribing the dollar value of assessment work to be performed in any year on a mining claim;
- 8. governing the performance of additional assessment work on mining claims exceeding the prescribed maximum areas and extension of time therefor;
- 9. governing applications;
- 10. prescribing the contents of and supporting information in reports;
- 11. permitting and governing the distribution of assessment work;
- 12. prescribing annual rents and fees and minimum rents and fees payable under leases of mining land and mining rights and licences to hold mining rights and the adjustment of the rents and fees;
- 13. governing the issue, refusal and cancellation of licences of occupation and leases;
- 14. prescribing conditions, reservations and provisions to which licences of occupation and leases are subject;
- 15. governing the rehabilitation of quarries;
- 16. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or land sold or leased as mining land or recorded under this Act or any predecessor of this Act, and for the opening, construction, maintenance and use of ditches, aqueducts, or raceways through, over or on such land for the conveying and passage of water for mining purposes;
- 17. prescribing protective measures in respect of inactive mines;
- 18. respecting the issue of licences to explore for and leases to produce natural gas and petroleum from Crown land, including,

1986 MINING Bill 29 75

- i. fees, rents and royalties payable in respect thereof, and
- ii. the bonding of licensees and the conditions of forfeiture of bonds;
- 19. governing the sinking, boring and drilling of brine wells and product storage wells;
- 20. governing the engineering designs of salt solution mining caverns and storage facilities and the volumes of material injected therein or removed therefrom;
- 21. respecting the submission of logs for brine wells and product storage wells, analysis or work carried out in the wells, including the measurement of injection or production of fluids from the salt solution mining or operations of storage facilities;
- 22. respecting monuments installed for the measurement of subsidence caused by salt solution mining and the operation of storage facilities;
- 23. governing the recording and submission of surveys and logs to determine the size and configuration of underground caverns created by salt solution mining or used for storage facilities;
- 24. governing the rehabilitation of brine wells, salt solution mining caverns, product storage wells and storage facilities;
- 25. respecting the submission of annual reports and the contents thereof;
- 26. prohibiting or regulating the removal of any material from any bed, beach, shore or waters of or adjacent to any part of the shores of Lake Erie, Lake Ontario or Lake Huron, from any land covered by the waters of any of those lakes that is adjacent to the shore from any sandbar or flat in any of those lakes or any channel or entrance to any of those lakes;
- 27. prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations.

Idem

(2) Any regulation may be general or particular in its application. R.S.O. 1980, c. 268, s. 190, amended.

PART XIII

SALT SOLUTION MINING AND STORAGE FACILITIES

Definitions

189. In this Part,

- "brine well" means a well sunk, bored or drilled into the ground to a salt formation;
- "permit holder" means a holder of a permit issued under this Part:
- "product storage well" means a well sunk, bored or drilled into the ground to a salt formation through which a product is stored or recovered;
- "salt solution mining" means the sinking, boring or drilling of a brine well and the extraction of salt in solution from underground salt formations;
- "salt solution mining cavern" means a cavern formed in a salt formation from salt solution mining;
- "storage facility" means a product storage well and a connecting cavern used to store hydrocarbon products. New.

Permit required

190.—(1) No person shall carry on salt solution mining or operate a storage facility except under the authority of a permit issued under this Part and in accordance with this Part and the regulations.

Application delayed

(2) Subsection (1) does not apply until six months after this Act comes into force. *New*.

Permit issued by Minister

191. The Minister may issue permits to carry on salt solution mining or to operate a storage facility. *New*.

Refusal to issue permit

192. The Minister may refuse to issue a permit where he considers that to issue the permit is contrary to the public interest. *New*.

Suspension or cancellation of permit

- 193. The Minister may suspend or cancel a permit where,
 - (a) the permittee has contravened any provisions of this Part or any of the conditions to which the permit is subject; or

- (b) he considers the continuation of operations under the permit to be contrary to the public interest. New.
- **194.**—(1) The Minister may order any permit holder to Immediate immediately suspend operations where the continuation of operations operations is not in accordance with the permit and he considers it will likely cause harm and where he does so, the permit holder shall immediately suspend his operations.

1986

- (2) Subject to an appeal under subsection 195 (2), the Min-Idem ister's decision to suspend operations is final. New.
- **195.**—(1) Where the Minister proposes to refuse to issue a Proposal permit or to suspend or cancel a permit, he shall give the suspend or applicant or permit holder written notice of his proposal and cancel the reasons therefor.

to refuse.

- (2) Any person who receives a notice under subsection (1) Appeal or an order to suspend operations may appeal to the Commissioner by serving a notice of appeal on the Commissioner within fifteen days after receiving the notice or the order, as the case may be.
- (3) After the Commissioner holds a hearing pursuant to an Commisappeal, he shall submit a recommendation to the Minister in report respect of the subject-matter of the appeal.

- (4) The Minister, after considering the Commissioner's rec-Minister's decision ommendation, may,
 - (a) issue or refuse to issue a permit;
 - (b) suspend or cancel a permit; or
 - (c) revoke an order of immediate suspension of operations,

as the case may be, and every decision the Minister makes in this respect is final.

196.—(1) Every permit issued under this Part is subject to Permits prescribed conditions.

subject to conditions

(2) The Minister may at any time, in writing, exclude the Exception by application of any prescribed condition in respect of any permit.

(3) The Minister may at any time make a permit subject to Other such conditions as he considers advisable. New.

provisions

Security as guarantee

197.—(1) The Minister may require a permit holder to give security in the prescribed manner to guarantee compliance with the conditions of the permit or any of the provisions of this Part.

Ordering work (2) Where the permit holder does not comply with the conditions of the permit or this Part, the Minister may order done the things required to be done with the cost thereof to be paid out of the security.

Debt to

(3) If the amount of the security is not sufficient to cover the cost of the work done under subsection (2), the amount of the shortfall is a debt owing to the Crown by the permit holder and is recoverable by the Crown in a court of competent jurisdiction. *New*.

Rehabilitation by permit holder **198.** Where operations have not been carried on under a permit for more than two years or upon final cessation of operations, the permit holder shall rehabilitate the brine well and the salt solution mining cavern or the product storage well and the storage facility, as the case may be, in accordance with the regulations. *New*.

Report of spills, leaks

199. Every permit holder shall report to the Minister all leaks, spills, contamination or other hazardous situations resulting from his operations under his permit. *New*.

Transfer

200. A permit may be transferred only with the written consent of the Minister. *New*.

PART XIV

TRANSITION

Prospector's licence

201.—(1) Every prospector's licence issued under a predecessor of this Act that is in good standing on the day this Act comes into force shall be deemed to be a prospector's licence issued under this Act except that it expires at midnight on the 31st day of March, 1986.

Idem

(2) The expiry provision in subsection (1) does not apply to a prospector's licence that was issued as a lifetime licence.

Idem

(3) No holder of a prospector's licence suspended under a predecessor of this Act may apply for a prospector's licence under this Act until after the period of suspension.

Idem

(4) No person who was the holder of a prospector's licence that was suspended under a predecessor of this Act may apply

for a prospector's licence under this Act except with the consent of the Minister. New.

202. Unused tags issued under a predecessor of this Act Tags may be exchanged before the 31st day of March, 1986 for tags issued under this Act and shall not be used after that date. New

203.—(1) For purposes of ascertaining assessment work Assessment credit requirements, every mining claim in good standing at the time this Act comes into force shall be considered to have been recorded as a mining claim at the time this Act comes into force.

(2) In respect of every mining claim to which subsection (1) Idem applies, the assessment work credits recorded for a claim shall be credited to that claim and where the recorded credits exceed the first year's requirements, the excess shall be credited against the requirements of subsequent years.

(3) Assessment work credits that are expressed in man-days Idem shall be credited, for purposes of subsection (2), at \$10 for each man-day credited. New.

204.—(1) Every order of the Commissioner or a recorder Previous made under a predecessor of this Act shall be deemed to be an order made by that person under this Act.

(2) Where an order of the Commissioner made under a Idem predecessor of this Act extends the time to apply and pay for a lease, the mining claim holder to whom the order applies may elect to apply and pay for the lease within one year after the day this Act comes into force or to continue to hold the claim by performing prescribed assessment work during that vear. New.

205. Every person to whom subsection 94 (1) of the Extending Mining Act, being chapter 268 of the Revised Statutes of for lease Ontario, 1980, applies on the day before this Act comes into force may apply for a lease under this Act within one year after this Act comes into force or he may maintain his mining claim under this Act by performing prescribed assessment work. New.

transferrable

206. Where a lease issued under a predecessor of this Act Old leases contains a provision requiring the consent of the Minister to the transfer of the lease, that provision shall be deemed to be deleted. New.

Repeal

207.—(1) The *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

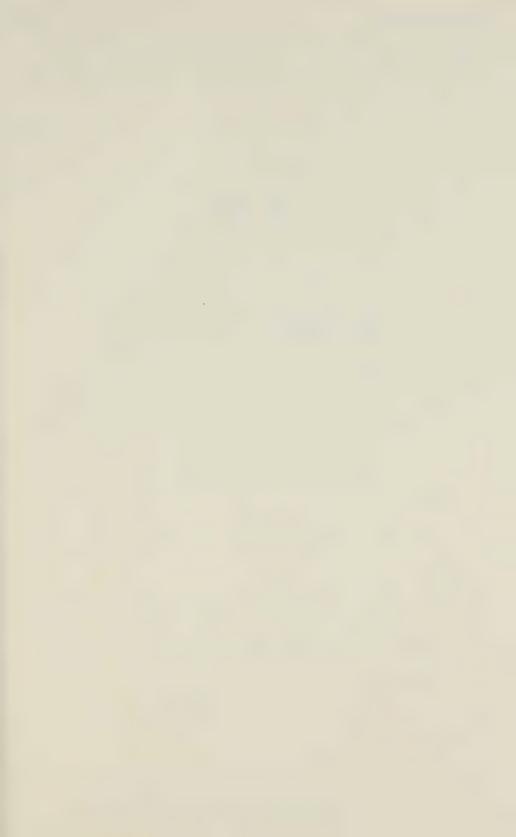
Idem

(2) The *Beach Protection Act*, being chapter 39 of the Revised Statutes of Ontario, 1980, is repealed.

Commencement **208.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

209. The short title of this Act is the Mining Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill30

An Act to amend the Education Act

The Hon. S. Conway

Minister of Education

1st Reading 2nd Reading 3rd Reading

Royal Assent



April 22nd, 1986

EXPLANATORY NOTES

The Bill relates to the provision of secondary school education by separate school boards.

The Bill deals with:

- Election by a separate school board to perform the duties of a secondary school board.
- 2. Entitlement to share in legislative grants.
- 3. Powers and duties in respect of secondary school grades.
- 4. Phasing in of secondary school grades.
- 5. Separate school electors on public boards.
- Exemption of separate school electors from payment of rates for public secondary school purposes.
- 7. Estimates and rates for separate secondary school purposes.
- 8. Transfer of employment of teachers and other staff.
- 9. Entitlement to continue as a pupil in a public secondary school.
- 10. Entitlement to be a pupil in a secondary school.
- 11. Continuation and functions of the Planning and Implementation Commission.
- 12. Transfers of use or ownership of real and personal property between public boards and Roman Catholic school boards.

Bill 30 1986

An Act to amend the Education Act

Whereas section 93 of the Constitution Act, 1867 embodies Preamble one of the essential conditions which facilitated the creation of a united Canada in 1867 by guaranteeing to Roman Catholics in Ontario certain rights and privileges with respect to denominational schools; and whereas the Roman Catholic separate schools have become a significant part of the school system in Ontario; and whereas it has been public policy in Ontario since 1899 to provide for public funds to support education in the Roman Catholic separate schools to the end of Grade 10; and whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools; and whereas the foregoing facts were affirmed by the Premier of Ontario in his statement to the Legislative Assembly on the 12th day of June, 1984;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 1 (1) of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1 and 1984, chapter 60, section 1, is further amended by adding thereto the following paragraphs:
 - 35a. "Planning and Implementation Commission" means the Planning and Implementation Commission continued under section 136r:

42a. "public board" means a board of education or a secondary school board established under section 69;

.

46a. "Roman Catholic school board" means a separate school board that has made an election under section 136a or 136f that has been approved by the Minister:

.

59a. "separate school board" means a board that operates a separate school for Roman Catholics.

2. The said Act is amended by adding thereto the following sections:

Secondary School Education

Election re secondary school **136a.**—(1) A separate school board may elect to perform the duties of a secondary school board for the area of jurisdiction of the board.

By-law

(2) An election under subsection (1) shall be by by-law approved by the Minister.

Approval

(3) The Minister may approve a by-law under subsection (2) upon receiving the advice of the Planning and Implementation Commission that the Commission is of the opinion that the first annual implementation plan formulated by the separate school board for the purpose of providing secondary school education and filed with the Commission will permit the separate school board to provide secondary school education and will promote the best interests of public education in Ontario.

Transmittal

(4) The secretary of a separate school board that makes an election under subsection (1) shall forthwith transmit to the Ministry a copy of the by-law certified by the secretary.

Notice

- (5) Upon approval of a by-law by the Minister, the Ministry shall transmit notice of the approval to the board that passed the by-law and shall transmit a copy of the by-law and notice of approval,
 - (a) to the Planning and Implementation Commission;

- (b) to the secretary of every board of education that has jurisdiction in the same area as the separate school board:
- to the clerk of every municipality all or part of which is within the area of jurisdiction of the separate school board; and
- (d) to the appropriate assessment commissioner.
- 136b.—(1) An election under section 136a is effective on Effective the first day of the school year specified in the by-law approved by the Minister.

(2) A by-law approved by the Minister after the 30th day of Election June in a year shall not take effect before the school year that 30th day commences in the next following year.

136c. A Roman Catholic school board has all the powers Powers and and shall perform all the duties that are conferred or imposed Roman by this Act on a secondary school board in respect of the sec- Catholic ondary school grades for which the Roman Catholic school board board is entitled to share in the legislative grants.

school

136d. A Roman Catholic school board may enter into an Agreements agreement with a public board or another Roman Catholic at other school board to provide for the instruction of pupils of the schools Roman Catholic school board in the school or schools operated by the public board or the other Roman Catholic school board and for the payment in respect of such pupils of fees calculated in accordance with the regulations.

136e.—(1) A Roman Catholic school board is entitled to Legislative share in the legislative grants for secondary school purposes.

(2) The payment of legislative grants to a Roman Catholic Conditions school board is subject to the conditions prescribed by the regulations.

(3) The apportionment and distribution of legislative grants Apportionto a Roman Catholic school board is subject to the regulations.

(4) The payment and apportionment of legislative grants to Compliance a Roman Catholic school board is subject to compliance by the Roman Catholic school board with sections 136a to 136y.

136f.—(1) Where, before the coming into force of this Transitional Act, the Planning and Implementation Commission has reported to the Minister upon the implementation plan of a

separate school board and has advised the Minister that the plan is appropriate for funding for the school year commencing in 1985, the separate school board is entitled to share in the legislative grants for secondary school purposes as of the first day of the school year commencing in 1985.

Conditions

- (2) The entitlement under subsection (1) is subject to,
 - (a) the separate school board electing by by-law to perform the duties of a secondary school board;
 - (b) the approval of the Minister; and
 - (c) subsections 136e (2) to (4).

By-law

(3) The separate school board shall forthwith after the coming into force of this Act pass the by-law and transmit to the Ministry a copy certified by the secretary of the board.

Application of s. 136a (3, 5)

(4) Subsections 136a (3) (approval) and (5) (notice) apply with necessary modifications in respect of an election under this section to perform the duties of a secondary school board.

Application of s. 136b (2)

(5) Subsection 136b (2) (election after 30th day of June) does not apply in respect of a by-law under this section.

Secondary school grades 136g.—(1) For the first school year in respect of which an election is effective, the entitlement of a Roman Catholic school board under section 136e applies in respect of the secondary school grade or grades, not exceeding grades nine and ten, in which the board is providing instruction in the immediately preceding school year and in respect of the next higher grade.

Grades nine and ten

(2) The entitlement of a Roman Catholic school board under section 136e applies in respect of grade nine or grade ten, or both, provided for the first time in the first school year in respect of which the election of the Roman Catholic school board is effective.

Additional grades

(3) For each subsequent school year, the board's entitlement under section 136e applies in respect of the same secondary school grades as in the previous school year and in respect of the next higher grade until the entitlement applies in respect of all secondary school grades.

French language schools **136h.**—(1) A Roman Catholic school board is entitled to share in the legislative grants as provided in section 136e in respect of a secondary school established and operated under

Part XI by a public board and transferred to and operated by the Roman Catholic school board.

(2) The entitlement under subsection (1) is in addition to Entitlement the entitlement under section 136g (secondary school grades).

136i.—(1) No member shall be elected by separate school electors to a public board that has the same or part of the same area of jurisdiction as a Roman Catholic school board.

Membership on public

(2) Subsection (1) applies in respect of the regular election Application under the Municipal Elections Act in the year 1988 and to R.S.O. 1980, elections held under that Act after the year 1988.

(3) A member of a public board mentioned in subsection Elected (1) elected by separate school electors ceases to be eligible to be a member of the public board at the end of the first calendar year in which the Roman Catholic school board performs the duties of a secondary school board in accordance with an election under section 136a.

member

136j.—(1) Every separate school supporter paying rates Payment on property in the area of jurisdiction of a Roman Catholic secondary school board is exempt from the payment of all rates imposed school rates for secondary school purposes of a public board to the same extent that the person is exempt from payment of rates imposed for public elementary school purposes.

(2) The exemption under subsection (1) commences in Application respect of the year following the year in which the election of the Roman Catholic school board becomes effective under section 136b.

(3) Subsections (1) and (2) apply on and after the 1st day of Application January in the year next following the year in which this section comes into force.

136k.—(1) The provisions of this Part that apply to the Estimates preparation and adoption of estimates and the levying and colfor separate lection of rates or taxes for separate school purposes apply secondary with necessary modifications for secondary school purposes in purposes in respect of a Roman Catholic school board.

(2) Every Roman Catholic school board shall continue to Elementary prepare and adopt the estimates required of it for elementary secondary school purposes and must prepare and adopt estimates for sec-estimates ondary school purposes in the same manner as is required of a public board.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Teaching and other staffs

1361.—(1) A public board that operates a school in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board shall designate, in accordance with the guidelines issued by the Planning and Implementation Commission, the persons on its supervisory officers staff, teaching staff and other staffs whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Yearly designations (2) The public board shall make the designations in each of the first ten school years during which the Roman Catholic school board elects to perform the duties of a secondary school board but not later than the date for each year fixed by the Planning and Implementation Commission.

Positions on staff of Roman Catholic school board

- (3) The Roman Catholic school board shall fill positions,
 - (a) on its teaching staff, by offering employment to designated persons employed by the public board whose qualifications recorded by the Ministry meet the qualifications required for the positions; and
 - (b) on its supervisory officers staff and other staffs, by offering employment to designated persons employed by the public board in substantially similar positions.

Hiring other persons

- (4) The Roman Catholic school board may hire another person to fill a position,
 - (a) on its supervisory officers staff or teaching staff, only if no designated person employed by the public board whose qualifications recorded by the Ministry meet the qualifications required for the position accepts the offer of employment or if there is no such designated person; or
 - (b) on its other staffs, only if no designated person in a substantially similar position accepts the offer of employment or if there is no such designated person.

Application of subss. (3, 4)

(5) Subsections (3) and (4) apply in respect of the first ten school years in respect of which the Roman Catholic school

board.

Bill 30

board elects to perform the duties of a secondary school

(6) Each public board that designates persons under this Transmittal section shall transmit to the Planning and Implementation Commission in each year but not later than the date for each year fixed by the Commission, a list of the names and positions of designated persons employed by the public board who have not been employed by a Roman Catholic school board.

EDUCATION

(7) The Commission shall transmit the lists of names of des- Idem ignated persons and positions to all boards each year that it receives the lists.

(8) The public board shall not terminate the employment of Employment by public a person designated under subsection (1) solely for the reason board set out in that subsection until such time as the person is employed by the Roman Catholic school board.

(9) Subsection (8) does not apply in respect of a designated Application person,

- (a) on the teaching staff of the public board, who refuses an offer of employment by the Roman Catholic school board in a position for which the designated person's qualifications recorded by the Ministry are required; or
- (b) on the supervisory officers staff or other staff of the public board, who refuses an offer of employment by the Roman Catholic school board in a position substantially similar to the position in which the person is employed by the public board on the date of designation.
- (10) A designated person employed by the Roman Catholic Salary school board has the right to an annual rate of salary of not less than the annual rate of salary that would have applied to the person if the person had continued in the employ of the public board in the first year that the person is employed by the Roman Catholic school board.

(11) A designated person employed by the Roman Catholic Seniority school board has the right to commence the employment with and employment status seniority and with probationary or permanent status with the Roman Catholic school board equal to the seniority and the probationary or permanent status the designated person would have had if the designated person had continued to be employed by the public board.

and employ-

Transfer of sick leave credits

(12) A designated person employed by a Roman Catholic school board is entitled to transfer to the plan maintained by that board sick leave credits standing to the person's credit with the public board that designated the person.

Limitation

(13) The amount of credits transferred shall not exceed the cumulative amount of sick leave credits permitted under the plan maintained by the Roman Catholic school board.

Account for remainder

(14) The balance of the person's sick leave credits shall be placed to the credit of the person in an account that shall be maintained by the public board.

Use of remainder

(15) The designated person may use the sick leave credits in the account while employed by the Roman Catholic school board by written designation which shall be transmitted by the Roman Catholic school board to the public board but the Roman Catholic school board shall pay the salary represented by the credits that are used, and the number of credits in the account shall be reduced by the number of credits used.

Payment on retirement

(16) Upon retirement from employment, the person is entitled to payment by the public board for such credits at the rate of one day's wages for each remaining credit at the rate received by the person immediately before retirement, but the person is not entitled to more than an amount equal to the person's wages for one-half the number of days remaining to the person's credit in the account and the person is not entitled to an amount equal to more than one-half year's earnings after including the amount to which the person is entitled under the sick leave plan maintained by the Roman Catholic school board.

Application of subss. (12-16)

(17) Subsections (12) to (16) apply only where the Roman Catholic school board has the same or part of the same area of jurisdiction as the public board.

Exception

(18) Subsections (12) to (17) do not apply where the public board and the Roman Catholic school board have entered into an agreement that provides for the payment for or transfer of the excess sick leave credits mentioned in those subsections.

Discrimination (19) The Roman Catholic school board shall not discriminate on the basis of creed with respect to employment against any person designated by the public board.

Application of subs. (19)

(20) Subsection (19) applies in respect of employment to fill a position and in respect of employment and advancement in employment while in a position.

(21) Subsections (1) to (20) apply despite section 23 of the Application of 1981. Human Rights Code, 1981.

136m.—(1) A dispute in respect of the designation of or Staff the failure to designate a person on the teaching or other resolution staffs of a public board or in respect of the employment of a person designated by a public board may be resolved by a grievance arbitration in accordance with this section.

(2) Either party to the dispute may notify the other party in Notice to writing of intention to submit the dispute to arbitration.

arbitrate

(3) The notice shall contain the name of the first party's appointee to an arbitration board.

Name of appointee

(4) The second party shall, within five days after receiving Response the notice, notify the first party either that the second party accepts the appointee as a single arbitrator or notify the first party of the name of the second party's appointee to the arbitration board.

(5) The two appointees shall, within five days after the Chairman appointment of the second of them, appoint a third person who shall be the chairman of the arbitration board.

(6) If the second party fails to give notice accepting a single Failure arbitrator or appointing a second arbitrator, or if the two appointees fail to appoint a chairman, the appointment shall be made by the Education Relations Commission upon the request of either party to the dispute.

- (7) The single arbitrator or the arbitration board, as the Hearing case may be, shall hear the parties and issue a decision.
- (8) The decision of a majority is the decision of the arbitra- Majority tion board, but if there is no majority, the decision of the chairman is the decision of the arbitration board.
- (9) The decision is final and binding upon the parties to the Decision is final dispute.
- Examination (10) A party to an arbitration proceeding shall be afforded an opportunity to examine before the hearing any written or documentary documentary evidence that will be produced or any report the evidence contents of which will be given in evidence at the hearing.
- (11) A single arbitrator or a member of an arbitration Prior board shall not have taken part before the hearing in an investigation or consideration of the subject-matter of the hearing.

knowledge

Notice of communication

(12) A single arbitrator or a member of an arbitration board shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or the representative of a party except upon notice to and opportunity for all parties to participate.

Participation in decision

(13) No member of an arbitration board shall participate in a decision of the board unless the member was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, a decision of the board shall not be given unless all members so present participate in the decision.

Release of documentary evidence (14) Documents and things put in evidence at an arbitration hearing shall, upon the request of the person who produced them, be released to the person by the board within a reasonable time after the matter in issue has been finally determined.

Collective agreement

(15) If there is a collective agreement between the parties to the dispute and the collective agreement does not provide for arbitration of such a dispute, the collective agreement shall be deemed to include subsections (1) to (14).

Pupils in public secondary schools 136n.—(1) A pupil in a public secondary school is entitled to continue to be a pupil in the public secondary school despite the fact that the pupil or the parent or other person who has lawful custody of the pupil becomes exempt from payment of rates imposed for public secondary school purposes by reason of an election made under section 136a by a Roman Catholic school board.

Fees

(2) The Roman Catholic school board shall pay to the board that operates the public secondary school the fees calculated in accordance with the regulations to which the board is entitled for providing secondary school education to the pupil.

Right of pupil to attend separate secondary school

- **1360.**—(1) A person who is qualified to be a pupil in a secondary school operated by a public board is entitled to be a pupil in a secondary school operated by a Roman Catholic school board if,
 - (a) the public secondary school is in the area of jurisdiction of the Roman Catholic school board; and
 - (b) the director of education or, if there is no director of education, the appropriate supervisory officer of the Roman Catholic school board certifies that there is accommodation available for the person in

11

the secondary school operated by the Roman Catholic school board.

(2) A person who is qualified to be a pupil in a secondary Idem school operated by a Roman Catholic school board is entitled to be a pupil in a secondary school operated by a public board if,

EDUCATION

- (a) the Roman Catholic secondary school is in the area of jurisdiction of the public board; and
- (b) the director of education or, if there is no director of education, the appropriate supervisory officer of the public board certifies that there is accommodation available for the person in the secondary school operated by the public board.
- (3) The public board shall pay the fee to which the Roman Fee Catholic school board is entitled for providing secondary school education under subsection (1), and the Roman Catholic school board shall pay the fee to which the public board is entitled for providing secondary school education under subsection (2).

(4) The fee to which a board is entitled under this section is Amount the lesser of the fee set by the board or the fee calculated in accordance with the regulations.

(5) When the director of education or the appropriate Notice re supervisory officer, as the case requires, is of the opinion that dation accommodation is not available for the person in the secondary school, the director or supervisory officer shall give written notice thereof to the person or, if the person is a minor, to the parent or other person who has lawful custody of the person.

(6) Upon written application, together with written reasons Exemption supporting the application, a Roman Catholic school board religious shall exempt a pupil who is not a Roman Catholic from pro-studies grams and courses of study in religious education if,

- the pupil is enrolled in a program that is not otherwise available to the pupil in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic school board; or
- (b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the pupil to attend a secondary school operated by a public board.

Idem

(7) A Roman Catholic school board may exempt from programs and courses of study in religious education any other pupil who is not a Roman Catholic.

Notice re exemption (8) Where a Roman Catholic school board refuses a request for an exemption under subsection (6), the director of education or, if there is no director of education, the appropriate supervisory officer of the board shall give written notice of the refusal, together with written reasons, to the pupil or, if the pupil is a minor, to the parent or other person who has lawful custody of the pupil.

Notice requiring hearing (9) The person requesting admission under subsection (1) or (2) or the pupil requesting an exemption, or the parent or other person who has lawful custody of the person or pupil may, by written notice served upon the director or supervisory officer and upon the Planning and Implementation Commission within fifteen days after service of the notice of the director or supervisory officer, require a hearing by the Planning and Implementation Commission.

Hearing

(10) The Planning and Implementation Commission shall appoint a time and place for a hearing and shall give notice thereof to the parties.

Parties

(11) The parties to the hearing are the director of education or the supervisory officer, as the case requires, and the pupil or other person who required the hearing.

Decision

(12) The Planning and Implementation Commission shall hear and decide the matter in issue and shall transmit a copy of its decision to each of the parties to the hearing.

Admission

(13) Where the decision of the Planning and Implementation Commission is that the person is entitled to be admitted as a pupil under subsection (1) or (2), the Roman Catholic school board or the public board, as the case requires, shall admit the person as a pupil in the secondary school.

Exemption

(14) Where the decision of the Planning and Implementation Commission is that the Roman Catholic school board is required to exempt the pupil under subsection (6) from programs and courses of study in religious education, the Roman Catholic school board shall grant the exemption to the pupil.

Application of 1981, c. 53

(15) Subsections (1) to (14) apply despite section 18 of the *Human Rights Code*, 1981.

Bill 30 13

136p. Other provisions of this Act shall be construed with Interpretation necessary modifications in order to give effect to and be consistent with sections 136a to 136y.

136q. A right or duty under sections 136a to 136y may be Enforcement enforced by order of the Divisional Court upon application to the court.

Planning and Implementation Commission

136r.—(1) The Planning and Implementation Commission Commission established under clause 9 (a) is continued and shall be composed of not more than eight members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate a Chairman chairman and a vice-chairman from among the members of chairman the Commission.

(3) The members of the Commission shall be appointed for Term of such terms as may be determined by the Lieutenant Governor in Council and may be reappointed for further terms.

(4) If the chairman is absent or unable to act or if there is a Authority of vacancy in the office of chairman, the vice-chairman shall act as and have all the powers of the chairman.

vice-chairman

(5) The members of the Commission shall be paid such Remuneration remuneration and expenses as are determined by the Lieutenant Governor in Council.

and expenses

(6) A majority of the members of the Commission, includ-Quorum ing the chairman or vice-chairman, constitutes a quorum.

(7) Three members of the Commission constitute a quorum Quorum for for the purposes of a proceeding before the Commission in proceedings respect of accommodation in a secondary school operated by a Roman Catholic school board or in respect of exemption from programs and courses of study in religious education, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding.

- (8) The Commission may sit in panels and the panels may Panels sit at the same time for the purposes of such proceedings.
- (9) The chairman shall assign the members of the Commis- Assignment sion to its panels and may change an assignment at any time.

1986

Staff and accommodation

Bill 30

(10) The Ministry shall provide the Commission with such staff and accommodation as the Minister considers necessary for the purposes of the Commission.

Advice to Minister

136s.—(1) The Planning and Implementation Commission shall advise the Minister in respect of specific means by which the extension of the Roman Catholic school system to include secondary school education may best be carried out.

Reports

(2) The Commission may report to the Minister at any time and shall report to the Minister in such form and manner, with such information and at such times as the Minister requires.

Consultation

(3) For the purpose of preparing its advice and reports to the Minister, the Commission shall consult with organizations that have a direct interest in the subject-matter of the particular advice and report, organizations and persons that the Commission considers it appropriate to consult and organizations and persons specified by the Minister.

Matters Commission

- (4) For the purpose of preparing its advice and reports to considered by the Minister, the Commission shall establish criteria in respect of and, in accordance with the criteria, shall evaluate,
 - (a) plans formulated by Roman Catholic school boards to provide secondary school education;
 - (b) plans formulated by public boards in relation to the extension of the Roman Catholic school system to include secondary school education;
 - plans for new or altered areas of jurisdiction of Roman Catholic school boards in relation to separate secondary schools;
 - (d) the effect on the employment of supervisory officers, teachers and other persons employed in secondary schools consequent upon the extension of the Roman Catholic school system and the plans formulated by Roman Catholic school boards and public boards in relation to the employment of such persons: and
 - (e) any other subject specified by the Minister.

Guidelines

(5) The Commission shall prepare and issue guidelines that shall govern the designation by public boards of persons on supervisory officers staffs, teaching staffs and other staffs whose services will not be required by the public boards con-

(6) A guideline issued by the Commission is not a regu-Application of R.S.O. lation within the meaning of the Regulations Act.

1980.

136t.—(1) The Planning and Implementation Commission Implemenmay require a Roman Catholic school board to formulate and file with the Commission each year an implementation plan setting out details of education programs, facilities, and supervisory officers, teaching staff and other staff required by the board for the purpose of providing the secondary school education until the Roman Catholic school board has filed implementation plans in respect of all secondary school grades.

(2) The Commission may require a public board that is Public affected or that is likely to be affected by the provision of secondary school education by a Roman Catholic school board to formulate and file with the Commission a plan setting out details of changes in education programs, facilities and supervisory officers, teaching staff and other staff that will be or that are likely to be necessary in response to the provision of secondary school education by the Roman Catholic school board.

(3) The Commission may specify the format to be used in Format plans to be filed by Roman Catholic school boards and public boards and may specify time limits for the filing of plans requested by the Commission.

- (4) Every Roman Catholic school board and every public Compliance board shall comply with a request by the Commission for the formulation and filing of a plan under subsections (1) to (3).
- 136u.—(1) For the purpose of ensuring that it receives Public adequate information, the Planning and Implementation Commission may hold public meetings in respect of the provision of secondary school education by individual Roman Catholic school boards.

meetings

(2) Where the Commission decides to hold a meeting men-Notice tioned in subsection (1), the Commission shall give notice of the meeting to the organizations it is required to consult, to such other persons or organizations as the Commission specifies and shall give public notice of the meeting.

136v.—(1) Where the Planning and Implementation Com- Negotiations mission is of the opinion that the implementation plans of a Roman Catholic school board and a public board do not together provide a method that meets the criteria set out in

subsection (2), the Commission shall so notify the boards and shall specify for the boards the matters that must be resolved in order to meet the criteria.

Criteria

(2) The criteria are that the method must permit the Roman Catholic school board to provide secondary school education and that the method must promote the best interests of public education in Ontario.

Good faith

(3) Upon receipt of the notice, the boards shall negotiate in good faith in respect of the matters specified by the Commission in order to meet the criteria set out in subsection (2).

Assistance by Commission 136w.—(1) A public board or a Roman Catholic school board, or the Minister, may request the Planning and Implementation Commission to arrange or assist in, or both, negotiations between the two boards respecting the transfer of the use or ownership of real or personal property and the transfer of persons on the teaching and other staffs for secondary school purposes.

Mediation

(2) Where the Commission is requested to arrange or assist in, or both, negotiations, the Commission shall inform the Minister and the parties to the negotiations of the request and the Commission shall confer with and mediate between the parties in order to bring about an agreement between the parties and shall report to the parties and to the Minister on the progress of the negotiations.

Fact finding (3) Where the Commission is requested to act as a fact finder, the Commission shall inform the Minister and the parties of the request and the Commission shall confer with the parties, inquire into the subject-matter of the negotiations and into any other matter that the Commission considers relevant to the subject-matter and shall report to the parties and to the Minister the findings of the Commission.

Procedures

(4) The Commission may establish its own procedures when assisting in negotiations or acting as a fact finder but the Minister may establish guidelines that shall govern such procedures.

Staff of Commission (5) The duties of the Commission under subsections (1) to(4) shall be performed by the staff of the Commission.

Duty of parties

(6) The parties to negotiations shall co-operate with the Commission and shall provide such information as is requested by the Commission when the Commission is assisting in negotiations or acting as a fact finder.

136x.—(1) A dispute in respect of a matter that may be Resolution of negotiated between a public board and a Roman Catholic between school board may be resolved by an order of the Planning and boards Implementation Commission upon application by either of the boards.

(2) Upon receipt of an application, the Commission shall Hearing appoint a tribunal composed of not more than three persons who shall hold a hearing in respect of and decide upon the subject-matter of the dispute.

- (3) The tribunal shall appoint a time and place for a hear- Notice ing and shall give notice thereof to the parties.
- (4) The parties to the hearing are the public board and the Parties Roman Catholic school board.
- (5) No person is eligible to be a member of a tribunal who Eligibility is or has been a member of a board that is a party to the dispute or who is acting or has, within a period of six months preceding the date of appointment of the hearing officer, acted as solicitor, counsel or agent of either of the parties.

(6) In deciding the matter, the tribunal shall endeavour to Criteria permit the Roman Catholic school board to provide secondary education and to promote the best interests of public education in Ontario.

- (7) The tribunal shall include with the report the record of Record the proceeding.
 - (8) The tribunal, in its decision, may provide for,

Decision

- the transfer of the use of real property or personal property, or both, from the public board to the Roman Catholic school board:
- (b) the transfer of the ownership of real property or personal property, or both, from the public board to the Roman Catholic school board;
- procedures that shall be followed in the reduction of the number of supervisory officers, the reduction of teaching staff and the reduction of other staffs by the public board and in the employment of supervisory officers, teachers and other staff by the Roman Catholic school board,

or any combination of them.

Order

(9) The tribunal shall transmit its decision in writing, together with written reasons and the record of the proceeding to the Commission, and the Commission shall issue and transmit to the parties an order in the terms of the decision.

Retransfer

(10) Real property ordered transferred under this section is not subject to expropriation by the public board, but upon application, the Minister, with the approval of the Lieutenant Governor in Council, may order the retransfer, subject to the conditions specified in the order, to the public board of the use or ownership of real property or personal property, or both, that was transferred in accordance with an order of the Commission.

Application of R.S.O. 1980, c. 148

(11) The Expropriations Act does not apply in respect of the transfer or retransfer of real property or personal property in accordance with an order under this section.

Enforcement of order

(12) The Commission or Minister, as the case requires, shall cause a copy of an order made under this section to be filed in the office of the Registrar of the Supreme Court, exclusive of the reasons therefor, and the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such.

L.G. in C. may confirm, vary or rescind decision or order

- (13) Upon the petition of any party to a proceeding under this section, filed with the Clerk of the Executive Council within twenty-eight days after the date of the decision or order of the Commission, the Lieutenant Governor in Council may,
 - (a) confirm, vary or rescind the whole or any part of the decision or order; or
 - (b) require the Commission to appoint a new tribunal to hold a new hearing of the whole or any part of the matter upon which the decision or order of the Commission was based.

No further petition

(14) The decision and order of the Commission after a new hearing ordered by the Lieutenant Governor in Council are not subject to petition under this section.

Filing of documents on petition (15) Upon the filing of a petition, the Commission shall transmit to the Clerk of the Executive Council the report and recommendations of the tribunal, the record of the proceeding and a copy of the decision and order of the Commission.

(16) The Lieutenant Governor in Council is not required to Hearing by hold or to afford to any person an opportunity for a hearing before deciding upon a petition under this section.

136y. The resolution of a matter between a public board Conflict and a Roman Catholic school board under sections 136a to 136x, except as specifically provided for in those sections, is a nullity if the result is inconsistent with any other Act, any other provision of this Act or a regulation under any Act.

COMPLEMENTARY AMENDMENTS

- 3.—(1) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is further amended by adding thereto the following subsection:
- (9) The assessment of a corporation for separate school Secondary purposes under subsections (1) to (8) in respect of a Roman purposes Catholic school board applies in the same manner in relation to secondary school purposes as to elementary school purposes.

- (2) Section 259 of the said Act is amended by adding thereto the following subsections:
- (2) A French-language advisory committee established by a Secondary Roman Catholic school board before or after the board makes an election under section 136a has the same duties in respect of the French-language schools or classes in the secondary schools operated by the board as the committee has in respect of the elementary schools operated by the board.

(3) Subsection (1) applies with necessary modifications in Idem respect of an English-language advisory committee established by a Roman Catholic school board.

- (3) The said Act is further amended by adding thereto the following sections:
- 277t.—(1) A person who is a separate school elector in Membership respect of a separate school board that has elected to perform board the duties of a secondary school board is not eligible for election to a board of education that has the same or part of the same area of jurisdiction as the separate school board.

on public

(2) Subsection (1) applies in respect of the regular election Application under the Municipal Elections Act in the year 1988 and to R.S.O. 1980, elections held under that Act after the year 1988.

Elected member (3) Subsection (1) does not disqualify a person from completing a term of office to which the person is elected as an additional member before the separate school board elects to perform the duties of a secondary school board.

Transfer of Part XI secondary school **277u.**—(1) Where a secondary school operated under Part XI is transferred to a separate school board and additional members are no longer required on the board from which the school is transferred, the additional members of the board of education from which the secondary school is transferred cease to be members of the board and become members of the French-language advisory committee of the board of education until the next regular election.

Additional members of separate school board

(2) The separate school board shall appoint to the separate school board such number of additional members as the Minister specifies, and the additional members shall hold office until the next regular election.

Application of 1977, c. 5, s. 5

4. Section 5 of *The Essex County French-language Secondary School Act, 1977*, being chapter 5, shall not be construed to prevent the conveyance of the School mentioned in the said Act to a Roman Catholic school board.

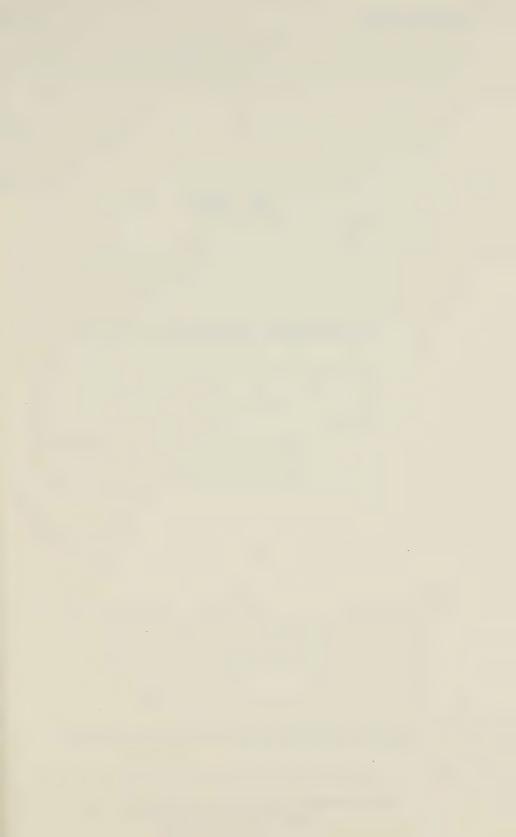
Repeal

5. Sections 136r to 136x of the *Education Act*, as enacted by section 2 of this Act, are repealed on the 1st day of July, 1995.

Commencement 6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the Education Amendment Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

ON

56

Bill30

An Act to amend the Education Act



The Hon. S. Conway

Minister of Education

1st Reading

April 22nd, 1986

2nd Reading

April 22nd, 1986

3rd Reading

Royal Assent

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

The Bill relates to the provision of secondary school education by separate school boards.

The Bill deals with:

- Election by a separate school board to perform the duties of a secondary school board.
- 2. Entitlement to share in legislative grants.
- 3. Powers and duties in respect of secondary school grades.
- 4. Phasing in of secondary school grades.
- 5. Separate school electors on public boards.
- Exemption of separate school electors from payment of rates for public secondary school purposes.
- 7. Estimates and rates for separate secondary school purposes.
- 8. Transfer of employment of teachers and other staff.
- 9. Entitlement to continue as a pupil in a public secondary school.
- 10. Entitlement to be a pupil in a secondary school.
- 11. Continuation and functions of the Planning and Implementation Commission.
- 12. Transfers of use or ownership of real and personal property between public boards and Roman Catholic school boards.

Bill 30 1986

An Act to amend the Education Act

Whereas section 93 of the Constitution Act, 1867 embodies Preamble one of the essential conditions which facilitated the creation of a united Canada in 1867 by guaranteeing to Roman Catholics in Ontario certain rights and privileges with respect to denominational schools; and whereas the Roman Catholic separate schools have become a significant part of the school system in Ontario; and whereas it has been public policy in Ontario since 1899 to provide for public funds to support education in the Roman Catholic separate schools to the end of Grade 10; and whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools; and whereas the foregoing facts were affirmed by the Premier of Ontario in his statement to the Legislative Assembly on the 12th day of June, 1984;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 1 (1) of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1 and 1984, chapter 60, section 1, is further amended by adding thereto the following paragraphs:
 - 35a. "Planning and Implementation Commission" means the Planning and Implementation Commission continued under section 136r:

42a. "public board" means a board of education or a secondary school board established under section 69;

.

46a. "Roman Catholic school board" means a separate school board that has made an election under section 136a or 136f that has been approved by the Minister:

48a. "salary" means all payments and benefits paid or provided to or for the benefit of a person who is designated under section 136l;

.

59a. "separate school board" means a board that operates a separate school for Roman Catholics;

.

65a. "support staff" means staff other than supervisory officer staff or teaching staff.

2. The said Act is amended by adding thereto the following sections:

Secondary School Education

Election re secondary school **136a.**—(1) A separate school board may elect to perform the duties of a secondary school board for the area of jurisdiction of the board.

By-law

(2) An election under subsection (1) shall be by by-law approved by the Minister.

Approval

(3) The Minister may approve a by-law under subsection (2) upon receiving the advice of the Planning and Implementation Commission that the Commission is of the opinion that the first annual implementation plan formulated by the separate school board for the purpose of providing secondary school education and filed with the Commission will permit the separate school board to provide secondary school education and will promote the best interests of public education in Ontario.

3

- (4) The secretary of a separate school board that makes an Transmittal election under subsection (1) shall forthwith transmit to the Ministry a copy of the by-law certified by the secretary.
- (5) Upon approval of a by-law by the Minister, the Ministry Notice shall transmit notice of the approval to the board that passed the by-law and shall transmit a copy of the by-law and notice of approval.

- (a) to the Planning and Implementation Commission;
- (b) to the secretary of every board of education that has jurisdiction in the same area as the separate school board:
- (c) to the clerk of every municipality all or part of which is within the area of jurisdiction of the separate school board: and
- (d) to the appropriate assessment commissioner.
- **136b.**—(1) An election under section 136a is effective on Effective the first day of the school year specified in the by-law approved by the Minister.
- (2) A by-law approved by the Minister after the 30th day of Election June in a year shall not take effect before the school year that 30th day commences in the next following year.

of June

136c. A Roman Catholic school board has all the powers Powers and and shall perform all the duties that are conferred or imposed Roman by this Act on a secondary school board in respect of the sec- Catholic ondary school grades for which the Roman Catholic school board board is entitled to share in the legislative grants.

duties of

136d.—(1) A Roman Catholic school board and a public Agreement board may enter into an agreement to provide secondary at other school instruction of pupils of the one board in a school or school schools operated by the other board, upon payment of fees by the board requesting the instruction to the board that provides the instruction.

(2) The fees for the provision of the instruction shall be cal- Calculation culated in accordance with the regulations.

136e.—(1) A Roman Catholic school board is entitled to Legislative share in the legislative grants for secondary school purposes.

Conditions

(2) The payment of legislative grants to a Roman Catholic school board is subject to the conditions prescribed by the regulations.

Apportionment and distribution (3) The apportionment and distribution of legislative grants to a Roman Catholic school board is subject to the regulations.

Compliance

(4) The payment and apportionment of legislative grants to a Roman Catholic school board is subject to compliance by the Roman Catholic school board with sections 136a to 136y.

Transitional

136f.—(1) Where, before the coming into force of this Act, the Planning and Implementation Commission has reported to the Minister upon the implementation plan of a separate school board and has advised the Minister that the plan is appropriate for funding for the school year commencing in 1985, the separate school board is entitled to share in the legislative grants for secondary school purposes as of the first day of the school year commencing in 1985.

Conditions

- (2) The entitlement under subsection (1) is subject to,
 - (a) the separate school board electing by by-law to perform the duties of a secondary school board;
 - (b) the approval of the Minister; and
 - (c) subsections 136e (2) to (4).

By-law

(3) The separate school board shall forthwith after the coming into force of this <u>section</u> pass the by-law and transmit to the Ministry a copy certified by the secretary of the board.

Application of s. 136a (3, 5)

(4) Subsections 136a (3) (approval) and (5) (notice) apply with necessary modifications in respect of an election under this section to perform the duties of a secondary school board.

Application of s. 136b (2)

(5) Subsection 136b (2) (election after 30th day of June) does not apply in respect of a by-law under this section.

Deemed designated persons (6) Section 136l applies with necessary modifications in respect of the entitlements of persons designated by a public board and employed by the separate school board after the Commission has reported to the Minister under subsection (1) but before the coming into force of this section.

Secondary school grades

136g.—(1) For the first school year in respect of which an election is effective, the entitlement of a Roman Catholic school board under section 136e applies in respect of the sec-

ondary school grade or grades, not exceeding grades nine and ten, in which the board is providing instruction in the immediately preceding school year and in respect of the next higher grade.

(2) The entitlement of a Roman Catholic school board Grades nine under section 136e applies in respect of grade nine or grade ten, or both, provided for the first time in the first school year in respect of which the election of the Roman Catholic school board is effective.

(3) For each subsequent school year, the board's entitle- Additional ment under section 136e applies in respect of the same secondary school grades as in the previous school year and in respect of the next higher grade until the entitlement applies in respect of all secondary school grades.

136h.—(1) A Roman Catholic school board is entitled to French share in the legislative grants as provided in section 136e in schools respect of a secondary school established and operated under Part XI by a public board and transferred to and operated by the Roman Catholic school board.

(2) The entitlement under subsection (1) is in addition to Entitlement the entitlement under section 136g (secondary school grades).

136i.—(1) No member shall be elected by separate school Membership electors to a public board that has the same or part of the board same area of jurisdiction as a Roman Catholic school board.

(2) Subsection (1) applies in respect of the regular election Application under the Municipal Elections Act in the year 1988 and to R.S.O. 1980, elections held under that Act after the year 1988.

(3) After the end of the first calendar year in which a Eligibility Roman Catholic school board performs the duties of a secondschool ary school board in accordance with an election under section elector 136a or 136f, no member elected by separate school electors and no separate school supporter or separate school elector is eligible to be a member of a public board that has the same or part of the same area of jurisdiction as the Roman Catholic school board

136j.—(1) Every separate school supporter paying rates Payment on property in the area of jurisdiction of a Roman Catholic secondary school board is exempt from the payment of all rates imposed school rates for secondary school purposes of a public board to the same extent that the person is exempt from payment of rates imposed for public elementary school purposes.

Application of subs. (1)

(2) The exemption under subsection (1) commences in respect of the year following the year in which the election of the Roman Catholic school board becomes effective under section 136b.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Estimates and rates for separate secondary school purposes **136k.**—(1) The provisions of this Part that apply to the preparation and adoption of estimates and the levying and collection of rates or taxes for separate school purposes apply with necessary modifications for secondary school purposes in respect of a Roman Catholic school board.

Elementary and secondary estimates (2) Every Roman Catholic school board shall continue to prepare and adopt the estimates required of it for elementary school purposes and must prepare and adopt estimates for secondary school purposes in the same manner as is required of a public board.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Mandatory joint committees **136ka.**—(1) If the area of jurisdiction of a public board is substantially the same as the area of jurisdiction of a Roman Catholic school board or if their common area of jurisdiction includes the whole of a municipality, the two boards shall establish a joint committee.

Multiple committees

(2) If a board is required under subsection (1) to establish more than one joint committee, the board shall ensure that at least one member of each such joint committee is a member of the other joint committee or committees.

Combined joint committee

(3) If a Roman Catholic school board is required to establish more than one joint committee and all of the public boards concerned agree, the boards concerned may establish a single combined joint committee instead of the joint committees required under subsection (1).

Composition

- (4) Each joint committee and combined joint committee shall consist of such number of members as the boards concerned may agree upon and, if the boards are unable to agree, shall be composed of,
 - (a) three members of each public board concerned, appointed by their respective boards; and

- **EDUCATION**
- (b) three members of the Roman Catholic school board, appointed by that board.
- (5) If a board that appoints members to a joint committee Frenchor a combined joint committee is required to have a Frenchlanguage section or a French-language education council, at tative least one appointee of that board shall be a member of such section or council.

(6) Subsection (5) applies with necessary modifications if a Idem board is required to have an English-language section or an English-language education council.

(7) Nothing in Part IX-A or IX-B applies so as to restrict Idem the participation of a member of a joint committee or combined joint committee in any meeting of the committee or so as to prevent the member from voting on any matter at a meeting of the committee.

(8) A member of a joint committee or a combined joint Term of committee shall hold office during the term of the members of his or her respective board and until a new board is organized and a successor is appointed or elected, as the case may be.

(9) Subsection 74 (7) and subsections 75 (1), (2) and (3) Application apply with necessary modifications to a joint committee or and 75 (1-3) combined joint committee.

(10) The boards concerned shall make available to the joint Personnel committee or combined joint committee such personnel and services as the boards consider necessary for the proper functioning of the joint committee or combined joint committee.

and services

(11) A joint committee or combined joint committee shall hold public meetings to report upon its work.

Public meetings

(12) A joint committee or combined joint committee is responsible for exploring opportunities for transfering facilities, leasing facilities or sharing services, facilities, resources and staff, and may make recommendations in respect of the implementation of programs for such purpose.

Recommen-

(13) A public board and a Roman Catholic school board shall consider any recommendation submitted to it in writing recommenby a joint committee or combined joint committee and shall not refuse its approval without having given the committee an opportunity to be heard by the board or by the board and any committee of the board to which such recommendation is referred.

Consideration dations by

Reconsideration of recommendations

(14) If a recommendation requires the approval of two or more boards to be effective and one or more of the boards concerned rejects the recommendation, the board or boards that approved the recommendation may make representations to the board or boards that rejected the recommendation, in which case the board or boards that rejected the recommendation shall reconsider the recommendation and may approve or reject it.

Annual report

(15) Each joint committee and combined joint committee shall report annually upon its proceedings and the disposition of its recommendations to the public board, the Roman Catholic school board and to the Planning and Implementation Commission which shall review and comment upon the reports as part of its annual report to the Minister.

Teaching and other staffs

1361.—(1) A public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board shall designate, in accordance with the regulations or by agreement between the boards, the persons on its supervisory officers staff, elementary teaching staff, secondary teaching staff and support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Contents of regulations and agreements

- (2) The regulations or agreement referred to in subsection (1) shall provide for,
 - (a) the exchange of enrolment and other data between the boards so as to enable the public board to make the calculations necessary to determine the designation referred to in subsection (1);
 - (b) methods for encouraging voluntary transfers of public board teachers and supervisory officers to positions with the Roman Catholic school board and for treating a person so transferred as a designated person with all rights and entitlements provided by this Act; and
 - (c) a right of first refusal, on the basis of seniority, for designated persons with respect to positions that become vacant in the public board.

Idem

(3) The regulations or agreement referred to in subsection (1) may contain provisions in addition to those required by subsection (2), including provisions related to the encouragement of the secondment and assignment of services of teach-

ers and supervisory officers of the public board to positions with the Roman Catholic school board.

(4) No agreement under subsection (1) renders inoperative Collective any provision in a collective agreement unless the branch affiliate or affiliates concerned agree in writing to an amendment to the collective agreement.

agreements

(5) In determining the designations referred to in subsec- Affirmative tion (1) and in implementing its employment policy thereafter, the public board shall endeavour to maintain and promote affirmative action with respect to the employment of women on its teaching staff.

(6) The public board shall make the designations referred to in subsection (1) in each of the first ten school years during which the Roman Catholic school board performs the duties of a secondary school board but not later than the date prescribed by the regulations for each year.

designations

(7) The teaching contract, employment contract or employ- Transfer of ment relationship, as the case may be, of a person designated by a public board under subsection (1) is transferred to, and assumed by, the Roman Catholic school board referred to in subsection (1) effective the 1st day of September next following the date upon which the public board makes the designation or upon such earlier date as the boards concerned may agree upon.

employment

(8) A Roman Catholic school board to which the teaching Similar contract, employment contract or employment relationship of any person is transferred under subsection (7) shall employ the person in a position substantially similar to the position in which the person was employed by the public board immediately before the transfer.

(9) If the Roman Catholic school board has no position as Training provided in subsection (8) for the designated person on the appropriate staff of the board, the designated person is entitled to receive training assistance, as prescribed by the regulations, for an alternate position on the appropriate staff, and the Roman Catholic school board shall maintain the person in its employ, provide the assistance and offer to the person employment in a position appropriate to either his or her previous or newly aguired qualifications.

assistance

(10) If a designated person objects to the transfer of Objectors employment to the Roman Catholic school board for reasons of conscience, he or she may so advise the public board and, unless it is of the opinion that the objection is not made in

good faith, the public board shall designate another person in place of the person making the objection.

Seniority

(11) Subject to any collective agreement in effect, the public board shall designate, on the basis of seniority, the persons on its support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Transmittal of lists

(12) Each public board that designates persons under this section shall transmit to the Planning and Implementation Commission in each year but not later than the date for each year fixed by the Commission, a list of the names and positions of persons that it has designated.

Compensation rate (13) A designated person employed by the Roman Catholic school board has the right to an annual rate of salary of not less than the annual rate of salary that would have applied to the person if the person had continued in the employ of the public board in the first year that the person is employed by the Roman Catholic school board but if the annual rate of salary of the position in which the person is employed by the Roman Catholic school board is lower than such first-mentioned annual rate of salary, the designated person is not entitled to any increase in annual rate of salary until the annual rate of salary of the position becomes equal to such first-mentioned annual rate of salary.

Seniority and employment status

(14) A designated person employed by the Roman Catholic school board has the right to commence the employment with seniority and with probationary or permanent status with the Roman Catholic school board equal to the seniority and the probationary or permanent status the designated person would have had if the designated person had continued to be employed by the public board.

Sick leave credits

(15) Sick leave credits standing to a designated person's credit with the public board shall be transferred to the plan maintained by the Roman Catholic school board at the time the person's employment is transferred under subsection (7).

Credit for total accumu-

(16) If the number of sick leave credits transferred exceeds the total number of sick leave credits that may be accumulated under the plan to which they are transferred, the designated person shall be given credit in the plan for the number transferred but is not entitled to accumulate further sick leave credits under the plan unless the plan is amended to permit a greater accumulation.

(17) Subject to subsection (16), a designated person Accumulation employed by a Roman Catholic school board is entitled to sick leave accumulate and to use sick leave credits in accordance with credits the plan maintained by the Roman Catholic school board.

Bill 30

- (18) Upon termination of employment with the Roman Gratuity Catholic school board, a designated person is entitled to payment of an amount calculated in accordance with,
 - (a) the collective agreement that applied in respect of the designated person on the last date that the designated person was employed by the public board;
 - (b) the policy of the public board as of the last date that the designated person was employed by the public board.

as the case requires, as though the designated person had been in the continuous employ of the public board.

- (19) In lieu of the payment under subsection (18), the des- Idem ignated person is entitled to require payment of an amount calculated in accordance with.
 - (a) the collective agreement that applies in respect of the designated person on the last date that the designated person is employed by the Roman Catholic school board: or
 - (b) the policy of the Roman Catholic school board as of the last date that the designated person is employed by the Roman Catholic school board,

as the case requires.

(20) The amount of the payment under subsection (18) or Idem (19) shall be shared by the public board and Roman Catholic school board in the ratio that the number of years of service of the designated person with each board bears to the total number of years of service of the designated person with such boards.

(21) Section 4 of the Human Rights Code, 1981 applies to Employment, designated persons employed by a Roman Catholic school board in respect of their employment, advancement and promotion by the Board, notwithstanding section 23 of the said Code.

1981, c. 53

Definition

(22) In this section, "seniority" means seniority as agreed upon between the public board that employed the designated person and the organization that entered into a collective agreement with the public board in respect of the designated person, or, where there is no collective agreement, in accordance with the policy of the public board.

Deemed designated persons (23) This section applies with necessary modifications in respect of entitlements of teachers who were employed by a public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board and who subsequent to a report to the Minister by the Commission under subsection 136f (1) but before the coming into force of this section accepted employment with the Roman Catholic school board.

Hiring after ten-year period **1361a.**—(1) For the purpose of maintaining the distinctiveness of separate schools, the Roman Catholic school board may require as a condition of employment that teachers hired by the board after the ten school year period mentioned in subsection 136l (6) agree to respect the philosophy and traditions of Roman Catholic separate schools in the performance of their duties.

Application of 1981, c. 53

(2) Subject to subsection (1), and despite section 23 of the *Human Rights Code*, 1981, section 4 of the said Code applies to ensure that such teachers employed by a Roman Catholic school board will enjoy equal opportunity in respect of their employment, advancement and promotion by the board.

Repeal

(3) If it is finally determined by a court that subsection (1) or (2) prejudicially affects a right or privilege with respect to denominational schools guaranteed by the Constitution of Canada, subsections (1) and (2) are repealed, it being the intention of the Legislature that the remaining provisions of the Act are separate from and independent of the said subsections.

Staff dispute resolution **136m.**—(1) A dispute in respect of the designation of or the failure to designate a person on the teaching or other staffs of a public board or in respect of any matter arising under section 136l in the employment relationship between a designated person and a Roman Catholic school board may be resolved by a grievance arbitration in accordance with this section.

Parties

(2) The parties to the arbitration are the public board or the Roman Catholic school board, as the case requires, and the person or, if the person is employed in accordance with the

terms of a collective agreement, the organization that represents the person under the collective agreement.

EDUCATION

(3) Either party to the dispute may notify the other party in Notice to writing of intention to submit the dispute to arbitration.

(4) The notice shall contain the name of the first party's Name of appointee to an arbitration board.

(5) The second party shall, within five days after receiving Response the notice, notify the first party either that the second party accepts the appointee as a single arbitrator or notify the first party of the name of the second party's appointee to the arbitration board.

(6) The two appointees shall, within five days after the Chairman appointment of the second of them, appoint a third person who shall be the chairman of the arbitration board.

(7) If the second party fails to give notice accepting a single Failure arbitrator or appointing a second arbitrator, or if the two appointees fail to appoint a chairman, the appointment shall be made by the Education Relations Commission upon the request of either party to the dispute.

- (8) The single arbitrator or the arbitration board, as the Hearing case may be, shall hear the parties and issue a decision.
- (9) The decision of a majority is the decision of the arbitra- Majority tion board, but if there is no majority, the decision of the chairman is the decision of the arbitration board.

(10) The decision is final and binding upon the parties to Decision the dispute and upon the person in respect of whom the dispute has been arbitrated and who is represented by the organization that is a party.

(11) A party to an arbitration proceeding shall be afforded Examination an opportunity to examine before the hearing any written or documentary documentary evidence that will be produced or any report the evidence contents of which will be given in evidence at the hearing.

(12) A single arbitrator or a member of an arbitration Prior board shall not have taken part before the hearing in an investigation or consideration of the subject-matter of the hearing.

knowledge

(13) A single arbitrator or a member of an arbitration Notice of board shall not communicate directly or indirectly in relation communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party

or the representative of a party except upon notice to and opportunity for all parties to participate.

Participation in decision

(14) No member of an arbitration board shall participate in a decision of the board unless the member was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, a decision of the board shall not be given unless all members so present participate in the decision.

Release of documentary evidence

(15) Documents and things put in evidence at an arbitration hearing shall, upon the request of the person who produced them, be released to the person by the board within a reasonable time after the matter in issue has been finally determined.

Collective

 $(\underline{16})$ If there is a collective agreement between the parties to the dispute and the collective agreement does not provide for arbitration of such a dispute, the collective agreement shall be deemed to include subsections (1) to (15).

Vacancy on arbitration board 136ma.—(1) If a member of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be made within sixty days after the date of appointment of the chairman, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death before the arbitration board has completed its work, a replacement shall be appointed by the person or body that appointed the member, and the arbitration board shall continue to function as if such member were a member of the arbitration board from the beginning.

Chairman unable to act

(2) If the chairman of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the members of the arbitration board who shall within seven days of the giving of the notice appoint a person to be the chairman and if the appointment is not so made by the members, it shall be made by the Education Relations Commission, and after the chairman is appointed the arbitration shall begin anew.

Arbitrator unable to act

(3) If a arbitrator is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitrator and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the arbitrator and if the appointment is not so made, it shall be made by the Education Relations Commission, and after the arbitrator is appointed the arbitration shall begin anew.

136mb. For the purpose of the arbitration and in order to Matters that reach a decision in respect of the dispute, the arbitrator or considered by arbitration board.

may be arbitrator or arbitration board

- may inquire into and consider any matter that the arbitrator or arbitration board considers relevant to the arbitration; and
- (b) subject to such conditions as the arbitrator or arbitration board may establish, may permit persons who are not parties to the arbitration to participate at the hearing of the matter.

136mc. The arbitrator or arbitration board shall complete Report of the consideration of the dispute and shall report the decision arbitration to the parties, the Education Relations Commission and the board · Planning and Implementation Commission in writing within sixty days after the giving of notice of the appointment of the arbitrator or within sixty days of the appointment of the chairman of the arbitration board, as the case may be, or within such longer period of time as may be fixed in writing by the arbitrator or arbitration board and consented to by the Education Relations Commission.

136md. Each of the parties to an arbitration shall pay Arbitration one-half of the fees and expenses of the arbitrator or, in the expenses case of an arbitration board, of the members and chairman of the arbitration board, except that if one of the parties is a natural person and not an organization the public board or Roman Catholic school board that is the other party shall pay all of the fees and expenses of the arbitrator or of the members and chairman of the arbitration board.

136me. The Arbitrations Act does not apply to an arbi-Application tration of a dispute mentioned in section 136m, except if there R.S.O. 1980, is no agreement with respect to the fees of the arbitrator or of c. 25 the members and chairman of an arbitration board, the fees prescribed under that Act shall be charged.

Pupils in public secondary schools **136n.**—(1) A pupil in a public secondary school that is operated by,

- (a) the public board of which the pupil is a resident pupil; or
- (b) a public board to which the public board of which the pupil was qualified to be a resident pupil pays fees in respect of the pupil,

is entitled to continue to be a pupil in the public secondary school notwithstanding that the pupil or the parent or other person who has lawful custody of the pupil becomes exempt from payment of rates imposed for public secondary school purposes by reason of an election made under section 136a or 136f by the Roman Catholic school board that has jurisdiction in whole or in part in the same area of jurisdiction as that of the public board that,

- (c) operates the secondary school of which the pupil was a resident pupil at the time of the election by the Roman Catholic school board under section 136a or 136f; or
- (d) pays fees to the public board that operates the secondary school attended by the pupil.

Payments to public board (2) A Roman Catholic school board shall make payments to a public board that has substantially the same or part of the same area of jurisdiction as the Roman Catholic school board of amounts of money in respect of the secondary school pupils who are qualified to be resident pupils of the Roman Catholic school board for secondary school purposes who exercise their right under subsection (1).

Calculation

(3) The time or times at which and manner in which the payments required by subsection (2) shall be made, the method of calculation of the amounts of the payments, and the basis for determination of the numbers of pupils in respect of whom the payments are required shall be that prescribed by the regulations.

No fees chargeable (4) A public board shall not charge a fee to a Roman Catholic school board in respect of a pupil who exercises the right set out in subsection (1).

Metropolitan Toronto (5) Payments required to be made by the Metropolitan Separate School Board under subsection (2) to a board of education for an area municipality in The Municipality of Metropolitan Toronto shall be made to The Metropolitan Toronto

School Board and The Metropolitan Toronto School Board shall take the payments into account in approving the estimates of the boards of education and in making its estimates under the Municipality of Metropolitan Toronto Act.

EDUCATION

R.S.O. 1980,

(6) For the purposes of section 209, a payment under sub- Accounting section (2) shall be deemed to be an estimated expenditure of the Roman Catholic school board for secondary school purposes and an estimated revenue for secondary school purposes of the public board that receives the payment.

(7) A regulation made for the purposes of this section,

Regulations

- may be of general application or may apply only to such board or boards as are set out in the regulation: and
- (b) may set out for different boards different times and manners in which payments shall be made, different methods of calculating the amounts of the payments and different bases for determining the number of pupils in respect of whom payments are required.
- **1360.**—(1) A person who is qualified to be a resident Right pupil in respect of a secondary school operated by a public separate board is entitled to be a pupil in a secondary school operated secondary by a Roman Catholic school board if the area of jurisdiction of the public board is in whole or in part the same as the area of jurisdiction of the Roman Catholic school board.

(2) A person who is qualified to be a resident pupil in respect of a secondary school operated by a Roman Catholic school board is entitled to be a pupil in a secondary school secondary operated by a public board if the area of jurisdiction of the Roman Catholic school board is in whole or in part the same as the area of jurisdiction of the public board.

(3) The public board shall pay the fee to which the Roman Fee Catholic school board is entitled for providing secondary school education under subsection (1), and the Roman Catholic school board shall pay the fee to which the public board is entitled for providing secondary school education under subsection (2).

(4) The fee to which a board is entitled under this section is Amount the lesser of the fee set by the board or the fee calculated in accordance with the regulations.

(5) Upon written application, a Roman Catholic school Exemption from board shall exempt a person who is qualified to be a resident religious

studies

pupil in respect of a secondary school operated by a public board from programs and courses of study in religious education if,

- (a) the person is enrolled in a program that is not otherwise available to the person in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic school board;
- (b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the person to attend a secondary school operated by a public board; or
- (c) the person is enrolled in an instructional unit of the Roman Catholic school board under Part XI.

Idem

(6) A person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board for a reason other than the one mentioned in clause 1360 (5) (a), (b) or (c) is considered to have enrolled in all of the school's programs and courses of study in religious education.

Additional exemptions

(7) In addition to the exemptions provided for in subsection (5), no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board shall be required to take part in any program or course of study in religious education where a parent or guardian of the person, or the person where the person is an adult, applies in writing to the Roman Catholic school board for exemption of the person therefrom.

Interpretation

136p. Other provisions of this Act shall be construed with necessary modifications in order to give effect to and be consistent with sections 136a to 136y.

Enforcement

136q. A right or duty under sections 136a to 136y may be enforced by order of the Divisional Court upon application to the court.

Planning and Implementation Commission

Commission continued

136r.—(1) The Planning and Implementation Commission established under clause 9 (a) is continued and shall be composed of not more than eight members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate a Chairman chairman and a vice-chairman from among the members of chairman the Commission.

(3) The members of the Commission shall be appointed for Term of such terms as may be determined by the Lieutenant Governor in Council and may be reappointed for further terms.

(4) If the chairman is absent or unable to act or if there is a Authority of vacancy in the office of chairman, the vice-chairman shall act as and have all the powers of the chairman.

vice-chairman

(5) The members of the Commission shall be paid such Remuneration remuneration and expenses as are determined by the Lieutenant Governor in Council.

and expenses

(6) A majority of the members of the Commission, includ- Quorum ing the chairman or vice-chairman, constitutes a quorum.

(7) The Commission, in its name, may be a party to any application before the Divisional Court.

Divisional Court

(8) The Ministry shall provide the Commission with such Staff and staff and accommodation as the Minister considers necessary dation for the purposes of the Commission.

136s.—(1) The Planning and Implementation Commission Advice to shall advise the Minister in respect of specific means by which the extension of the Roman Catholic school system to include secondary school education may best be carried out.

Minister

(2) The Commission shall make an annual report to the Minister and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(3) In addition to its annual report, the Commission may Additional report to the Minister at any time and shall report to the Minister in such form and manner, with such information and at such times as the Minister requires.

(4) For the purpose of preparing its advice and reports to Consultation the Minister, the Commission shall consult with organizations that have a direct interest in the subject-matter of the particular advice and report, organizations and persons that the Commission considers it appropriate to consult and organizations and persons specified by the Minister.

Matters Commission

- (5) For the purpose of preparing its advice and reports to considered by the Minister, the Commission shall establish criteria in respect of and, in accordance with the criteria, shall evaluate,
 - plans formulated by Roman Catholic school boards to provide secondary school education;
 - (b) plans formulated by public boards in relation to the extension of the Roman Catholic school system to include secondary school education;
 - plans for new or altered areas of jurisdiction of Roman Catholic school boards in relation to separate secondary schools;
 - (d) the effect on the employment of supervisory officers, teachers and other persons employed in secondary schools consequent upon the extension of the Roman Catholic school system and the plans formulated by Roman Catholic school boards and public boards in relation to the employment of such persons; and
 - any other subject specified by the Minister.

Nonapplication of subss. (4, 5)

(6) Subsections (4) and (5) do not apply in respect of annual reports.

Nonapplication of R.S.O. 1980, c. 446

(7) The Regulations Act does not apply to criteria established under subsection (5).

Implementation plans

136t.—(1) The Planning and Implementation Commission may require a Roman Catholic school board to formulate and file with the Commission each year an implementation plan setting out details of education programs, facilities, and supervisory officers, teaching staff and other staff required by the board for the purpose of providing the secondary school education until the Roman Catholic school board has filed implementation plans in respect of all secondary school grades.

Public board

(2) The Commission may require a public board that is affected or that is likely to be affected by the provision of secondary school education by a Roman Catholic school board to formulate and file with the Commission annually, not later than the date specified by the Commission, a plan setting out details of changes in education programs, facilities and supervisory officers, teaching staff and other staff that will be or that are likely to be necessary in response to the provision of secondary school education by the Roman Catholic school board.

(3) The Commission may specify the format to be used in Format plans to be filed by Roman Catholic school boards and public boards and may specify time limits for the filing of plans requested by the Commission.

(4) Every Roman Catholic school board and every public Compliance board shall comply with a request by the Commission for the formulation and filing of a plan under subsections (1) to (3).

(5) The Regulations Act does not apply to any matter speci-Nonfied under subsection (3).

application of R.S.O. 1980.

136u.—(1) For the purpose of ensuring that it receives Public adequate information, the Planning and Implementation Commission may hold public meetings in respect of the provision of secondary school education by individual Roman Catholic school boards

(2) Where the Commission decides to hold a meeting men-Notice tioned in subsection (1), the Commission shall give notice of the meeting to the organizations it is required to consult, to such other persons or organizations as the Commission specifies and shall give public notice of the meeting.

136v.—(1) Where the Planning and Implementation Com- Negotiations mission is of the opinion that the implementation plans of one or more Roman Catholic school boards and one or more public boards that have jurisdiction in the same or part of the same area of jurisdiction as the Roman Catholic school board or boards do not together provide a method that meets the criteria set out in subsection (2), the Commission shall so notify the boards and shall specify for them the matters that must be resolved in order to meet the criteria.

(2) The criteria are that the method,

Criteria

- (a) must permit the Roman Catholic school board to provide viable secondary school education;
- (b) must promote the best interests of public education in Ontario:
- (c) must ensure the viability of the secondary school program offered by the public board especially in single secondary school communities; and

(d) must ensure, in a community that has only one secondary school operated by a public board, that the secondary school will continue to be operated by the public board despite the election to provide secondary eduction by a Roman Catholic school board having jurisdiction in the community, unless the public board decides otherwise.

Good faith

(3) Upon receipt of the notice, the boards shall negotiate in good faith in respect of the matters specified by the Commission in order to meet the criteria set out in subsection (2).

Assistance by Commission

- 136w.—(1) A public board or a Roman Catholic school board, or the Minister, may request the Planning and Implementation Commission to arrange or assist in, or both, negotiations between or among the boards respecting any one or more of.
 - (a) the transfer of the use of real or personal property;
 - (b) the transfer of the ownership of real or personal property; or
 - (c) the joint use or ownership of real or personal property.

Appointment of mediator

(2) The Minister, on the recommendation of the Planning and Implementation Commission, may appoint a mediator to confer with one or more public boards and one or more Roman Catholic school boards and to endeavour to effect an agreement between or among the boards on the matters that the Commission has specified must be resolved between them.

Duties of mediator (3) The mediator shall confer with the boards and endeavour to effect an agreement and shall report the result to the Minister.

Duties of boards (4) Each board shall co-operate with the mediator and shall provide forthwith to the mediator such information as is requested by the mediator, and the mediator may request the provision of such information as the mediator considers relevant to the matters to be resolved.

Remuneration and expenses

(5) The mediator shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council, and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred in the course of his or her duties.

Appointment of tribunal to resolve matters **136x.**—(1) If a mediator reports to the Minister that the mediator was unable to effect an agreement, the Minister shall

appoint a tribunal of not more than three persons to hear and decide the matters that must be resolved.

(2) The Minister shall designate one of the members of the Head of tribunal to be the head of the tribunal.

tribunal

(3) No person is eligible to be a member of a tribunal who Eligibility is or has been a member of a board that is a party to the proceeding before the tribunal or who is acting or has, within a period of six months preceding the date of the designation of the head of the tribunal, acted as solicitor, counsel or agent of either of the parties.

(4) If a member of the tribunal is unable to enter on or to carry on his or her duties so as to enable a decision to be made within sixty days after the date of the designation of the head of the tribunal, or within such longer period of time as may be fixed in writing by the tribunal and consented to by the Minister, or ceases to act by reason of withdrawal or death before the tribunal has completed its work, a replacement shall be appointed by the Minister and the tribunal shall continue to function as if the replacement member were a member of the tribunal from the beginning.

Replacement

- (5) The tribunal shall appoint a time and place for a hearing Notice and shall give notice thereof to the parties.
- (6) The parties to the hearing are the public board or public Parties boards and the Roman Catholic school board or Roman Catholic school boards that are unable to effect an agreement on the matters that must be resolved between or among them.
- (7) In deciding the matters that must be resolved, the tribu-Criteria nal shall endeavour to permit the Roman Catholic school board or Roman Catholic school boards to provide secondary education and shall endeavour to promote the best interests of public education in Ontario.

(8) The tribunal, in its decision, may provide for,

Decision

- (a) the transfer of the use of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;
- (b) the transfer of the ownership of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;

(c) the joint use of real property or personal property, or both, by a public board that is a party and a Roman Catholic school board that is a party in such proportions as the tribunal specifies,

or any combination of them.

Delivery of decision

(9) The tribunal shall give to the Minister its decision in writing, together with written reasons therefor, and the record of the proceeding forthwith after making the decision.

Order by Minister (10) The Minister shall issue and transmit to the parties an order in the terms of the decision, together with a copy of the decision and the written reasons for the decision.

Retransfer

- (11) Real property that is the subject of an order under subsection (10) is not subject to expropriation by a public board, but upon application the Minister with the approval of the Lieutenant Governor in Council may,
 - (a) order the retransfer, subject to such conditions as are specified in the retransfer order, of the use or ownership of all or part of the real property or personal property, or both, that was transferred in accordance with an order under subsection (10);
 - (b) by order vary or rescind an order under subsection (10) that provides for the joint use of any real property or personal property.

Application of R.S.O. 1980, c. 148

(12) The *Expropriations Act* does not apply in respect of the transfer or retransfer of real property or personal property in accordance with an order under this section.

Enforcement of order (13) The Minister shall cause a copy of an order made under this section to be filed in the office of the Registrar of the Supreme Court, exclusive of the reasons therefor, and the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such.

L.G. in C. may confirm, vary or rescind order

- (14) Upon the petition of a party to a proceeding under this section, filed with the Clerk of the Executive Council within twenty-eight days after the date of an order by the Minister in the proceeding, the Lieutenant Governor in Council may,
 - (a) confirm, vary or rescind the whole or any part of the order; or
 - (b) require the Minister to appoint a new tribunal to hold a new hearing of the whole or any part of the

matter upon which the order of the Minister was based.

(15) The order of the Minister after a new hearing ordered No further by the Lieutenant Governor in Council is not subject to petition under this section.

(16) Upon the filing of a petition, the Minister shall file Filing of with the Clerk of the Executive Council the decision and written reasons therefor of the tribunal and a copy of the order of the Minister.

(17) The Lieutenant Governor in Council is not required to Hearing by hold or to afford to any person an opportunity for a hearing before deciding upon a petition under this section.

(18) The head of the tribunal and the other members of the Remuneratribunal who are not officers in the Public Service of Ontario expenses shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

136xa. Notwithstanding any other provision of this Act, Limitation the ownership of real property used for purposes of a public property secondary school shall not be transferred to a Roman Catholic transfers school board before the fifth anniversary of the day this section comes into force and no mediator under section 136w or tribunal under section 136x shall make a decision affecting the ownership of any such real property before that anniversary but this section does not apply so as to prevent such a transfer before that anniversary if the public board and the Roman Catholic school board agree and the Minister approves of the transfer.

- 136xb. The Lieutenant Governor in Council may make Regulations regulations,
 - (a) prescribing any matter that is referred to in sections 136a to 136y as prescribed by the regulations;
 - (b) prescribing the method of determining persons to be designated under subsection 1361 (1) and the matters referred to in subsections 136l (2) and (3);
 - requiring public boards and Roman Catholic school boards to confer with the Planning and Implementation Commission and branch affiliates on such matters as may be prescribed.

Conflict

136y. The resolution of a matter between a public board and a Roman Catholic school board under sections 136a to 136xb, except as specifically provided for in those sections, is a nullity if the result is inconsistent with any other Act, any other provision of this Act or a regulation under any Act.

COMPLEMENTARY AMENDMENTS

3.—(1) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is further amended by adding thereto the following subsection:

Secondary school purposes

- (9) The assessment of a corporation for separate school purposes under subsections (1) to (8) in respect of a Roman Catholic school board applies in the same manner in relation to secondary school purposes as to elementary school purposes.
- (2) Section 186 of the said Act is amended by adding thereto the following subsection:

Exception

- (7) This section does not apply to arbitrations under section 136m.
- 4. Section 5 of *The Essex County French-language Secondary School Act*, 1977, being chapter 5, shall not be construed to prevent the conveyance of the School mentioned in the said Act to a Roman Catholic school board.
- 5. Clause 154 (4) (b) of the Regional Municipality of Ottawa-Carleton Act, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed at the end of the first calendar year in which The Carleton Roman Catholic Separate School Board makes an election that is approved by the Minister of Education under section 136a or 136f of the Education Act.
- 6. Subsection 121 (2) of the Municipality of Metropolitan Toronto Act, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 11, is further amended,
 - (a) by adding "and" at the end of clause (c) and by striking out "and" at the end of clause (d); and
 - (b) by repealing clause (e),

at the end of the first calendar year in which the Metropolitan Separate School Board makes an election that is approved by the Minister under section 136a or 136f of the *Education Act*.

- 7. Sections 136r to 136x of the *Education Act*, as enacted by Repeal section 2 of this Act, are repealed on the 1st day of July, 1995.
- $\underline{\boldsymbol{8}}.$ This Act comes into force on the day it receives Royal $_{\text{ment}}^{\text{Commence-}}$
- 2. The short title of this Act is the Education Amendment Short title Act, 1986.







Bill30

(Chapter 21 Statutes of Ontario, 1986)

An Act to amend the Education Act

The Hon. S. Conway

Minister of Education

1st Reading April 22nd, 1986

2nd Reading April 22nd, 1986

3rd Reading June 23rd, 1986

Royal Assent June 24th, 1986





Bill 30

1986

An Act to amend the Education Act

Whereas section 93 of the Constitution Act, 1867 embodies Preamble one of the essential conditions which facilitated the creation of a united Canada in 1867 by guaranteeing to Roman Catholics in Ontario certain rights and privileges with respect to denominational schools; and whereas the Roman Catholic separate schools have become a significant part of the school system in Ontario; and whereas it has been public policy in Ontario since 1899 to provide for public funds to support education in the Roman Catholic separate schools to the end of Grade 10; and whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools; and whereas the foregoing facts were affirmed by the Premier of Ontario in his statement to the Legislative Assembly on the 12th day of June, 1984;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1 and 1984, chapter 60, section 1, is further amended by adding thereto the following paragraphs:

35a. "Planning and Implementation Commission" means the Planning and Implementation Commission continued under section 136r:

- 42a. "public board" means a board of education or a secondary school board established under section 69;
- 46a. "Roman Catholic school board" means a separate school board that has made an election under section 136a or 136f that has been approved by the Minister:
- 48a. "salary" means all payments and benefits paid or provided to or for the benefit of a person who is designated under section 136-1;
- 59a. "separate school board" means a board that operates a separate school for Roman Catholics;
- 65a. "support staff" means staff other than supervisory officer staff or teaching staff.
- 2. The said Act is amended by adding thereto the following sections:

Secondary School Education

Election re secondary school **136a.**—(1) A separate school board may elect to perform the duties of a secondary school board for the area of jurisdiction of the board.

By-law

(2) An election under subsection (1) shall be by by-law approved by the Minister.

Approval

(3) The Minister may approve a by-law under subsection (2) upon receiving the advice of the Planning and Implementation Commission that the Commission is of the opinion that the first annual implementation plan formulated by the separate school board for the purpose of providing secondary school education and filed with the Commission will permit the separate school board to provide secondary school education and will promote the best interests of public education in Ontario.

(4) The secretary of a separate school board that makes an Transmittal election under subsection (1) shall forthwith transmit to the Ministry a copy of the by-law certified by the secretary.

(5) Upon approval of a by-law by the Minister, the Ministry Notice shall transmit notice of the approval to the board that passed the by-law and shall transmit a copy of the by-law and notice of approval,

- (a) to the Planning and Implementation Commission;
- (b) to the secretary of every board of education that has jurisdiction in the same area as the separate school board:
- to the clerk of every municipality all or part of which is within the area of jurisdiction of the separate school board; and
- (d) to the appropriate assessment commissioner.
- 136b.—(1) An election under section 136a is effective on Effective the first day of the school year specified in the by-law approved by the Minister.

(2) A by-law approved by the Minister after the 30th day of Election June in a year shall not take effect before the school year that after 30th day commences in the next following year.

of June

136c. A Roman Catholic school board has all the powers and shall perform all the duties that are conferred or imposed Roman by this Act on a secondary school board in respect of the sec- Catholic ondary school grades for which the Roman Catholic school board board is entitled to share in the legislative grants.

Powers and duties of

136d.—(1) A Roman Catholic school board and a public Agreement board may enter into an agreement to provide secondary at other school instruction of pupils of the one board in a school or school schools operated by the other board, upon payment of fees by the board requesting the instruction to the board that provides the instruction.

(2) The fees for the provision of the instruction shall be calculated in accordance with the regulations.

136e.—(1) A Roman Catholic school board is entitled to Legislative share in the legislative grants for secondary school purposes.

Conditions

(2) The payment of legislative grants to a Roman Catholic school board is subject to the conditions prescribed by the regulations.

Apportionment and distribution (3) The apportionment and distribution of legislative grants to a Roman Catholic school board is subject to the regulations.

Compliance

(4) The payment and apportionment of legislative grants to a Roman Catholic school board is subject to compliance by the Roman Catholic school board with sections 136a to 136y.

Transitional

136f.—(1) Where, before the coming into force of this Act, the Planning and Implementation Commission has reported to the Minister upon the implementation plan of a separate school board and has advised the Minister that the plan is appropriate for funding for the school year commencing in 1985, the separate school board is entitled to share in the legislative grants for secondary school purposes as of the first day of the school year commencing in 1985.

Conditions

- (2) The entitlement under subsection (1) is subject to,
 - (a) the separate school board electing by by-law to perform the duties of a secondary school board;
 - (b) the approval of the Minister; and
 - (c) subsections 136e (2) to (4).

By-law

(3) The separate school board shall forthwith after the coming into force of this section pass the by-law and transmit to the Ministry a copy certified by the secretary of the board.

Application of s. 136a (3, 5)

(4) Subsections 136a (3) (approval) and (5) (notice) apply with necessary modifications in respect of an election under this section to perform the duties of a secondary school board.

Application of s. 136b (2)

(5) Subsection 136b (2) (election after 30th day of June) does not apply in respect of a by-law under this section.

Deemed designated persons (6) Section 136-l applies with necessary modifications in respect of the entitlements of persons designated by a public board and employed by the separate school board after the Commission has reported to the Minister under subsection (1) but before the coming into force of this section.

Secondary school grades

136g.—(1) For the first school year in respect of which an election is effective, the entitlement of a Roman Catholic school board under section 136e applies in respect of the sec-

ondary school grade or grades, not exceeding grades nine and ten, in which the board is providing instruction in the immediately preceding school year and in respect of the next higher grade.

(2) The entitlement of a Roman Catholic school board Grades nine under section 136e applies in respect of grade nine or grade ten, or both, provided for the first time in the first school year in respect of which the election of the Roman Catholic school board is effective.

(3) For each subsequent school year, the board's entitlement under section 136e applies in respect of the same secondary school grades as in the previous school year and in respect of the next higher grade until the entitlement applies in respect of all secondary school grades.

Additional

136h.—(1) A Roman Catholic school board is entitled to share in the legislative grants as provided in section 136e in schools respect of a secondary school established and operated under Part XI by a public board and transferred to and operated by the Roman Catholic school board.

language

(2) The entitlement under subsection (1) is in addition to Entitlement the entitlement under section 136g (secondary school grades).

136i.—(1) No member shall be elected by separate school Membership electors to a public board that has the same or part of the same area of jurisdiction as a Roman Catholic school board.

on public

(2) Subsection (1) applies in respect of the regular election Application under the Municipal Elections Act in the year 1988 and to R.S.O. 1980, elections held under that Act after the year 1988.

(3) After the end of the first calendar year in which a Eligibility Roman Catholic school board performs the duties of a second-school ary school board in accordance with an election under section elector 136a or 136f, no member elected by separate school electors and no separate school supporter or separate school elector is eligible to be a member of a public board that has the same or part of the same area of jurisdiction as the Roman Catholic school board.

136j.—(1) Every separate school supporter paying rates Payment on property in the area of jurisdiction of a Roman Catholic school board is exempt from the payment of all rates imposed school rates for secondary school purposes of a public board to the same extent that the person is exempt from payment of rates imposed for public elementary school purposes.

of public secondary Application of subs. (1)

(2) The exemption under subsection (1) commences in respect of the year following the year in which the election of the Roman Catholic school board becomes effective under section 136b.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Estimates and rates for separate secondary school purposes **136k.**—(1) The provisions of this Part that apply to the preparation and adoption of estimates and the levying and collection of rates or taxes for separate school purposes apply with necessary modifications for secondary school purposes in respect of a Roman Catholic school board.

Elementary and secondary estimates (2) Every Roman Catholic school board shall continue to prepare and adopt the estimates required of it for elementary school purposes and must prepare and adopt estimates for secondary school purposes in the same manner as is required of a public board.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Mandatory joint committees **136ka.**—(1) If the area of jurisdiction of a public board is substantially the same as the area of jurisdiction of a Roman Catholic school board or if their common area of jurisdiction includes the whole of a municipality, the two boards shall establish a joint committee.

Multiple committees (2) If a board is required under subsection (1) to establish more than one joint committee, the board shall ensure that at least one member of each such joint committee is a member of the other joint committee or committees.

Combined joint committee

(3) If a Roman Catholic school board is required to establish more than one joint committee and all of the public boards concerned agree, the boards concerned may establish a single combined joint committee instead of the joint committees required under subsection (1).

Composition

- (4) Each joint committee and combined joint committee shall consist of such number of members as the boards concerned may agree upon and, if the boards are unable to agree, shall be composed of,
 - (a) three members of each public board concerned, appointed by their respective boards; and

- (b) three members of the Roman Catholic school board, appointed by that board.
- (5) If a board that appoints members to a joint committee Frenchor a combined joint committee is required to have a Frenchlanguage section or a French-language education council, at least one appointee of that board shall be a member of such section or council.

- (6) Subsection (5) applies with necessary modifications if a board is required to have an English-language section or an English-language education council.
- (7) Nothing in Part XI-A or XI-B applies so as to restrict Idem the participation of a member of a joint committee or combined joint committee in any meeting of the committee or so as to prevent the member from voting on any matter at a meeting of the committee.

(8) A member of a joint committee or a combined joint committee shall hold office during the term of the members of his or her respective board and until a new board is organized and a successor is appointed or elected, as the case may be.

Term of

(9) Subsection 74 (7) and subsections 75 (1), (2) and (3) Application apply with necessary modifications to a joint committee or and 75 (1-3) combined joint committee.

(10) The boards concerned shall make available to the joint committee or combined joint committee such personnel and services as the boards consider necessary for the proper functioning of the joint committee or combined joint committee.

Personnel and services

(11) A joint committee or combined joint committee shall Public hold public meetings to report upon its work.

meetings

(12) A joint committee or combined joint committee is responsible for exploring opportunities for transfering facilities, leasing facilities or sharing services, facilities, resources and staff, and may make recommendations in respect of the implementation of programs for such purpose.

Recommen-

(13) A public board and a Roman Catholic school board Consideration shall consider any recommendation submitted to it in writing by a joint committee or combined joint committee and shall not refuse its approval without having given the committee an opportunity to be heard by the board or by the board and any committee of the board to which such recommendation is referred.

recommendations by

Reconsideration of recommendations

(14) If a recommendation requires the approval of two or more boards to be effective and one or more of the boards concerned rejects the recommendation, the board or boards that approved the recommendation may make representations to the board or boards that rejected the recommendation, in which case the board or boards that rejected the recommendation shall reconsider the recommendation and may approve or reject it.

Annual report

(15) Each joint committee and combined joint committee shall report annually upon its proceedings and the disposition of its recommendations to the public board, the Roman Catholic school board and to the Planning and Implementation Commission which shall review and comment upon the reports as part of its annual report to the Minister.

Teaching and other staffs

136-1.—(1) A public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board shall designate, in accordance with the regulations or by agreement between the boards, the persons on its supervisory officers staff, elementary teaching staff, secondary teaching staff and support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Contents of regulations and agreements

- (2) The regulations or agreement referred to in subsection (1) shall provide for,
 - (a) the exchange of enrolment and other data between the boards so as to enable the public board to make the calculations necessary to determine the designation referred to in subsection (1);
 - (b) methods for encouraging voluntary transfers of public board teachers and supervisory officers to positions with the Roman Catholic school board and for treating a person so transferred as a designated person with all rights and entitlements provided by this Act; and
 - (c) a right of first refusal, on the basis of seniority, for designated persons with respect to positions that become vacant in the public board.

Idem

(3) The regulations or agreement referred to in subsection (1) may contain provisions in addition to those required by subsection (2), including provisions related to the encouragement of the secondment and assignment of services of teach-

ers and supervisory officers of the public board to positions with the Roman Catholic school board.

(4) No agreement under subsection (1) renders inoperative Collective any provision in a collective agreement unless the branch affiliate or affiliates concerned agree in writing to an amendment to the collective agreement.

agreements

(5) In determining the designations referred to in subsec- Affirmative tion (1) and in implementing its employment policy thereafter, the public board shall endeavour to maintain and promote affirmative action with respect to the employment of women on its teaching staff.

(6) The public board shall make the designations referred Yearly to in subsection (1) in each of the first ten school years during which the Roman Catholic school board performs the duties of a secondary school board but not later than the date prescribed by the regulations for each year.

designations

(7) The teaching contract, employment contract or employment relationship, as the case may be, of a person designated by a public board under subsection (1) is transferred to, and assumed by, the Roman Catholic school board referred to in subsection (1) effective the 1st day of September next following the date upon which the public board makes the designation or upon such earlier date as the boards concerned may agree upon.

Transfer of employment

(8) A Roman Catholic school board to which the teaching Similar contract, employment contract or employment relationship of any person is transferred under subsection (7) shall employ the person in a position substantially similar to the position in which the person was employed by the public board immediately before the transfer.

employment

(9) If the Roman Catholic school board has no position as Training provided in subsection (8) for the designated person on the appropriate staff of the board, the designated person is entitled to receive training assistance, as prescribed by the regulations, for an alternate position on the appropriate staff, and the Roman Catholic school board shall maintain the person in its employ, provide the assistance and offer to the person employment in a position appropriate to either his or her previous or newly acquired qualifications.

(10) If a designated person objects to the transfer of Objectors employment to the Roman Catholic school board for reasons of conscience, he or she may so advise the public board and, unless it is of the opinion that the objection is not made in

good faith, the public board shall designate another person in place of the person making the objection.

Seniority

(11) Subject to any collective agreement in effect, the public board shall designate, on the basis of seniority, the persons on its support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Transmittal of lists

(12) Each public board that designates persons under this section shall transmit to the Planning and Implementation Commission in each year but not later than the date for each year fixed by the Commission, a list of the names and positions of persons that it has designated.

Compensation rate (13) A designated person employed by the Roman Catholic school board has the right to an annual rate of salary of not less than the annual rate of salary that would have applied to the person if the person had continued in the employ of the public board in the first year that the person is employed by the Roman Catholic school board but if the annual rate of salary of the position in which the person is employed by the Roman Catholic school board is lower than such first-mentioned annual rate of salary, the designated person is not entitled to any increase in annual rate of salary until the annual rate of salary of the position becomes equal to such first-mentioned annual rate of salary.

Seniority and employment status (14) A designated person employed by the Roman Catholic school board has the right to commence the employment with seniority and with probationary or permanent status with the Roman Catholic school board equal to the seniority and the probationary or permanent status the designated person would have had if the designated person had continued to be employed by the public board.

Sick leave credits (15) Sick leave credits standing to a designated person's credit with the public board shall be transferred to the plan maintained by the Roman Catholic school board at the time the person's employment is transferred under subsection (7).

Credit for total accumulation (16) If the number of sick leave credits transferred exceeds the total number of sick leave credits that may be accumulated under the plan to which they are transferred, the designated person shall be given credit in the plan for the number transferred but is not entitled to accumulate further sick leave credits under the plan unless the plan is amended to permit a greater accumulation.

(17) Subject to subsection (16), a designated person Accumulation employed by a Roman Catholic school board is entitled to sick leave accumulate and to use sick leave credits in accordance with credits the plan maintained by the Roman Catholic school board.

(18) Upon termination of employment with the Roman Gratuity Catholic school board, a designated person is entitled to payment of an amount calculated in accordance with.

- (a) the collective agreement that applied in respect of the designated person on the last date that the designated person was employed by the public board: or
- (b) the policy of the public board as of the last date that the designated person was employed by the public board.

as the case requires, as though the designated person had been in the continuous employ of the public board.

(19) In lieu of the payment under subsection (18), the des- Idem ignated person is entitled to require payment of an amount calculated in accordance with.

- the collective agreement that applies in respect of the designated person on the last date that the designated person is employed by the Roman Catholic school board; or
- (b) the policy of the Roman Catholic school board as of the last date that the designated person is employed by the Roman Catholic school board,

as the case requires.

(20) The amount of the payment under subsection (18) or Idem (19) shall be shared by the public board and Roman Catholic school board in the ratio that the number of years of service of the designated person with each board bears to the total number of years of service of the designated person with such boards.

(21) Section 4 of the Human Rights Code, 1981 applies to designated persons employed by a Roman Catholic school board in respect of their employment, advancement and promotion by the Board, notwithstanding section 23 of the said Code.

Employment, advancement promotion 1981, c. 53

Definition

(22) In this section, "seniority" means seniority as agreed upon between the public board that employed the designated person and the organization that entered into a collective agreement with the public board in respect of the designated person, or, where there is no collective agreement, in accordance with the policy of the public board.

Deemed designated persons (23) This section applies with necessary modifications in respect of entitlements of teachers who were employed by a public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board and who subsequent to a report to the Minister by the Commission under subsection 136f (1) but before the coming into force of this section accepted employment with the Roman Catholic school board.

Hiring after ten-year period 136-la.—(1) For the purpose of maintaining the distinctiveness of separate schools, the Roman Catholic school board may require as a condition of employment that teachers hired by the board after the ten school year period mentioned in subsection 136-1 (6) agree to respect the philosophy and traditions of Roman Catholic separate schools in the performance of their duties.

Application of 1981, c. 53

(2) Subject to subsection (1), and despite section 23 of the *Human Rights Code*, 1981, section 4 of the said Code applies to ensure that such teachers employed by a Roman Catholic school board will enjoy equal opportunity in respect of their employment, advancement and promotion by the board.

Repeal

(3) If it is finally determined by a court that subsection (1) or (2) prejudicially affects a right or privilege with respect to denominational schools guaranteed by the Constitution of Canada, subsections (1) and (2) are repealed, it being the intention of the Legislature that the remaining provisions of the Act are separate from and independent of the said subsections.

Staff dispute resolution 136m.—(1) A dispute in respect of the designation of or the failure to designate a person on the teaching or other staffs of a public board or in respect of any matter arising under section 136-l in the employment relationship between a designated person and a Roman Catholic school board may be resolved by a grievance arbitration in accordance with this section.

Parties

(2) The parties to the arbitration are the public board or the Roman Catholic school board, as the case requires, and the person or, if the person is employed in accordance with the

terms of a collective agreement, the organization that represents the person under the collective agreement.

(3) Either party to the dispute may notify the other party in Notice to writing of intention to submit the dispute to arbitration.

arbitrate

(4) The notice shall contain the name of the first party's appointee to an arbitration board.

Name of appointee

(5) The second party shall, within five days after receiving the notice, notify the first party either that the second party accepts the appointee as a single arbitrator or notify the first party of the name of the second party's appointee to the arbitration board.

(6) The two appointees shall, within five days after the Chairman appointment of the second of them, appoint a third person who shall be the chairman of the arbitration board

(7) If the second party fails to give notice accepting a single Failure arbitrator or appointing a second arbitrator, or if the two appointees fail to appoint a chairman, the appointment shall be made by the Education Relations Commission upon the request of either party to the dispute.

(8) The single arbitrator or the arbitration board, as the Hearing case may be, shall hear the parties and issue a decision.

(9) The decision of a majority is the decision of the arbitra- Majority tion board, but if there is no majority, the decision of the chairman is the decision of the arbitration board.

(10) The decision is final and binding upon the parties to the dispute and upon the person in respect of whom the dispute has been arbitrated and who is represented by the organization that is a party.

Decision

(11) A party to an arbitration proceeding shall be afforded Examination an opportunity to examine before the hearing any written or of documentary documentary evidence that will be produced or any report the evidence contents of which will be given in evidence at the hearing.

(12) A single arbitrator or a member of an arbitration board shall not have taken part before the hearing in an investigation or consideration of the subject-matter of the hearing.

Prior knowledge

(13) A single arbitrator or a member of an arbitration Notice of board shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party

or the representative of a party except upon notice to and opportunity for all parties to participate.

Participation in decision

(14) No member of an arbitration board shall participate in a decision of the board unless the member was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, a decision of the board shall not be given unless all members so present participate in the decision.

Release of documentary evidence (15) Documents and things put in evidence at an arbitration hearing shall, upon the request of the person who produced them, be released to the person by the board within a reasonable time after the matter in issue has been finally determined.

Collective agreement

(16) If there is a collective agreement between the parties to the dispute and the collective agreement does not provide for arbitration of such a dispute, the collective agreement shall be deemed to include subsections (1) to (15).

Vacancy on arbitration board 136ma.—(1) If a member of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be made within sixty days after the date of appointment of the chairman, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death before the arbitration board has completed its work, a replacement shall be appointed by the person or body that appointed the member, and the arbitration board shall continue to function as if such member were a member of the arbitration board from the beginning.

Chairman unable to act

(2) If the chairman of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the members of the arbitration board who shall within seven days of the giving of the notice appoint a person to be the chairman and if the appointment is not so made by the members, it shall be made by the Education Relations Commission, and after the chairman is appointed the arbitration shall begin anew.

Arbitrator unable to act

(3) If a arbitrator is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within

sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitrator and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the arbitrator and if the appointment is not so made, it shall be made by the Education Relations Commission, and after the arbitrator is appointed the arbitration shall begin anew.

136mb. For the purpose of the arbitration and in order to Matters that reach a decision in respect of the dispute, the arbitrator or arbitration board.

may be considered by arbitrator or arbitration board

- (a) may inquire into and consider any matter that the arbitrator or arbitration board considers relevant to the arbitration; and
- subject to such conditions as the arbitrator or arbitration board may establish, may permit persons who are not parties to the arbitration to participate at the hearing of the matter.

136mc. The arbitrator or arbitration board shall complete Report of the consideration of the dispute and shall report the decision arbitrator arbitration to the parties, the Education Relations Commission and the board Planning and Implementation Commission in writing within sixty days after the giving of notice of the appointment of the arbitrator or within sixty days of the appointment of the chairman of the arbitration board, as the case may be, or within such longer period of time as may be fixed in writing by the arbitrator or arbitration board and consented to by the Education Relations Commission.

arbitrator or

136md. Each of the parties to an arbitration shall pay Arbitration one-half of the fees and expenses of the arbitrator or, in the expenses case of an arbitration board, of the members and chairman of the arbitration board, except that if one of the parties is a natural person and not an organization the public board or Roman Catholic school board that is the other party shall pay all of the fees and expenses of the arbitrator or of the members and chairman of the arbitration board.

136me. The Arbitrations Act does not apply to an arbi-Application tration of a dispute mentioned in section 136m, except if there R.S.O. 1980, is no agreement with respect to the fees of the arbitrator or of c. 25 the members and chairman of an arbitration board, the fees prescribed under that Act shall be charged.

Pupils in public secondary schools **136n.**—(1) A pupil in a public secondary school that is operated by,

- (a) the public board of which the pupil is a resident pupil; or
- (b) a public board to which the public board of which the pupil was qualified to be a resident pupil pays fees in respect of the pupil,

is entitled to continue to be a pupil in the public secondary school notwithstanding that the pupil or the parent or other person who has lawful custody of the pupil becomes exempt from payment of rates imposed for public secondary school purposes by reason of an election made under section 136a or 136f by the Roman Catholic school board that has jurisdiction in whole or in part in the same area of jurisdiction as that of the public board that,

- (c) operates the secondary school of which the pupil was a resident pupil at the time of the election by the Roman Catholic school board under section 136a or 136f; or
- (d) pays fees to the public board that operates the secondary school attended by the pupil.

Payments to public board (2) A Roman Catholic school board shall make payments to a public board that has substantially the same or part of the same area of jurisdiction as the Roman Catholic school board of amounts of money in respect of the secondary school pupils who are qualified to be resident pupils of the Roman Catholic school board for secondary school purposes who exercise their right under subsection (1).

Calculation

(3) The time or times at which and manner in which the payments required by subsection (2) shall be made, the method of calculation of the amounts of the payments, and the basis for determination of the numbers of pupils in respect of whom the payments are required shall be that prescribed by the regulations.

No fees chargeable

(4) A public board shall not charge a fee to a Roman Catholic school board in respect of a pupil who exercises the right set out in subsection (1).

Metropolitan Toronto (5) Payments required to be made by the Metropolitan Separate School Board under subsection (2) to a board of education for an area municipality in The Municipality of Metropolitan Toronto shall be made to The Metropolitan Toronto

School Board and The Metropolitan Toronto School Board shall take the payments into account in approving the estimates of the boards of education and in making its estimates under the Municipality of Metropolitan Toronto Act.

R.S.O. 1980,

(6) For the purposes of section 209, a payment under sub- Accounting section (2) shall be deemed to be an estimated expenditure of the Roman Catholic school board for secondary school purposes and an estimated revenue for secondary school purposes of the public board that receives the payment.

(7) A regulation made for the purposes of this section,

Regulations

- (a) may be of general application or may apply only to such board or boards as are set out in the regulation; and
- (b) may set out for different boards different times and manners in which payments shall be made, different methods of calculating the amounts of the payments. and different bases for determining the number of pupils in respect of whom payments are required.
- 1360.—(1) A person who is qualified to be a resident Right pupil in respect of a secondary school operated by a public board is entitled to be a pupil in a secondary school operated secondary by a Roman Catholic school board if the area of jurisdiction of the public board is in whole or in part the same as the area of jurisdiction of the Roman Catholic school board.

separate

(2) A person who is qualified to be a resident pupil in respect of a secondary school operated by a Roman Catholic school board is entitled to be a pupil in a secondary school secondary operated by a public board if the area of jurisdiction of the Roman Catholic school board is in whole or in part the same as the area of jurisdiction of the public board.

Right to attend public

(3) The public board shall pay the fee to which the Roman Fee Catholic school board is entitled for providing secondary school education under subsection (1), and the Roman Catholic school board shall pay the fee to which the public board is entitled for providing secondary school education under subsection (2).

(4) The fee to which a board is entitled under this section is Amount the lesser of the fee set by the board or the fee calculated in accordance with the regulations.

(5) Upon written application, a Roman Catholic school Exemption board shall exempt a person who is qualified to be a resident

from religious pupil in respect of a secondary school operated by a public board from programs and courses of study in religious education if,

- (a) the person is enrolled in a program that is not otherwise available to the person in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic school board;
- (b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the person to attend a secondary school operated by a public board; or
- (c) the person is enrolled in an instructional unit of the Roman Catholic school board under Part XI.

Idem

(6) A person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board for a reason other than the one mentioned in clause 1360 (5) (a), (b) or (c) is considered to have enrolled in all of the school's programs and courses of study in religious education.

Additional exemptions

(7) In addition to the exemptions provided for in subsection (5), no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board shall be required to take part in any program or course of study in religious education where a parent or guardian of the person, or the person where the person is an adult, applies in writing to the Roman Catholic school board for exemption of the person therefrom.

Interpretation

136p. Other provisions of this Act shall be construed with necessary modifications in order to give effect to and be consistent with sections 136a to 136y.

Enforcement

136q. A right or duty under sections 136a to 136y may be enforced by order of the Divisional Court upon application to the court.

Planning and Implementation Commission

Commission continued

136r.—(1) The Planning and Implementation Commission established under clause 9 (a) is continued and shall be composed of not more than eight members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate a Chairman chairman and a vice-chairman from among the members of chairman the Commission.

(3) The members of the Commission shall be appointed for such terms as may be determined by the Lieutenant Governor in Council and may be reappointed for further terms.

(4) If the chairman is absent or unable to act or if there is a Authority of vacancy in the office of chairman, the vice-chairman shall act as and have all the powers of the chairman.

vice-chairman

(5) The members of the Commission shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council

Remuneration and expenses

- (6) A majority of the members of the Commission, includ- Quorum ing the chairman or vice-chairman, constitutes a quorum.
- (7) The Commission, in its name, may be a party to any application before the Divisional Court.

Applications Divisional Court

(8) The Ministry shall provide the Commission with such Staff and staff and accommodation as the Minister considers necessary accommodation for the purposes of the Commission.

accommo-

136s.—(1) The Planning and Implementation Commission shall advise the Minister in respect of specific means by which the extension of the Roman Catholic school system to include secondary school education may best be carried out.

Advice to

(2) The Commission shall make an annual report to the Annual Minister and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(3) In addition to its annual report, the Commission may Additional report to the Minister at any time and shall report to the Minister in such form and manner, with such information and at such times as the Minister requires.

(4) For the purpose of preparing its advice and reports to Consultation the Minister, the Commission shall consult with organizations that have a direct interest in the subject-matter of the particular advice and report, organizations and persons that the Commission considers it appropriate to consult and organizations and persons specified by the Minister.

Matters Commission

- (5) For the purpose of preparing its advice and reports to considered by the Minister, the Commission shall establish criteria in respect of and, in accordance with the criteria, shall evaluate,
 - (a) plans formulated by Roman Catholic school boards to provide secondary school education;
 - (b) plans formulated by public boards in relation to the extension of the Roman Catholic school system to include secondary school education;
 - plans for new or altered areas of jurisdiction of (c) Roman Catholic school boards in relation to separate secondary schools:
 - (d) the effect on the employment of supervisory officers, teachers and other persons employed in secondary schools consequent upon the extension of the Roman Catholic school system and the plans formulated by Roman Catholic school boards and public boards in relation to the employment of such persons: and
 - (e) any other subject specified by the Minister.

Nonapplication of subss. (4, 5)

(6) Subsections (4) and (5) do not apply in respect of annual reports.

Nonapplication R.S.O. 1980, c. 446

(7) The Regulations Act does not apply to criteria established under subsection (5).

Implementation plans

136t.—(1) The Planning and Implementation Commission may require a Roman Catholic school board to formulate and file with the Commission each year an implementation plan setting out details of education programs, facilities, and supervisory officers, teaching staff and other staff required by the board for the purpose of providing the secondary school education until the Roman Catholic school board has filed implementation plans in respect of all secondary school grades.

Public board

(2) The Commission may require a public board that is affected or that is likely to be affected by the provision of secondary school education by a Roman Catholic school board to formulate and file with the Commission annually, not later than the date specified by the Commission, a plan setting out details of changes in education programs, facilities and supervisory officers, teaching staff and other staff that will be or that are likely to be necessary in response to the provision of

secondary school education by the Roman Catholic school board.

(3) The Commission may specify the format to be used in Format plans to be filed by Roman Catholic school boards and public boards and may specify time limits for the filing of plans requested by the Commission.

(4) Every Roman Catholic school board and every public Compliance board shall comply with a request by the Commission for the formulation and filing of a plan under subsections (1) to (3).

(5) The Regulations Act does not apply to any matter speci-Nonfied under subsection (3).

application R.S.O. 1980. c. 446

136u.—(1) For the purpose of ensuring that it receives Public adequate information, the Planning and Implementation Commission may hold public meetings in respect of the provision of secondary school education by individual Roman Catholic school boards

(2) Where the Commission decides to hold a meeting men-Notice tioned in subsection (1), the Commission shall give notice of the meeting to the organizations it is required to consult, to such other persons or organizations as the Commission specifies and shall give public notice of the meeting.

136v.—(1) Where the Planning and Implementation Com- Negotiations mission is of the opinion that the implementation plans of one or more Roman Catholic school boards and one or more public boards that have jurisdiction in the same or part of the same area of jurisdiction as the Roman Catholic school board or boards do not together provide a method that meets the criteria set out in subsection (2), the Commission shall so notify the boards and shall specify for them the matters that must be resolved in order to meet the criteria.

(2) The criteria are that the method,

Criteria

- (a) must permit the Roman Catholic school board to provide viable secondary school education;
- (b) must promote the best interests of public education in Ontario;
- must ensure the viability of the secondary school program offered by the public board especially in single secondary school communities; and

(d) must ensure, in a community that has only one secondary school operated by a public board, that the secondary school will continue to be operated by the public board despite the election to provide secondary education by a Roman Catholic school board having jurisdiction in the community, unless the public board decides otherwise.

Good faith

(3) Upon receipt of the notice, the boards shall negotiate in good faith in respect of the matters specified by the Commission in order to meet the criteria set out in subsection (2).

Assistance by Commission 136w.—(1) A public board or a Roman Catholic school board, or the Minister, may request the Planning and Implementation Commission to arrange or assist in, or both, negotiations between or among the boards respecting any one or more of,

- (a) the transfer of the use of real or personal property;
- (b) the transfer of the ownership of real or personal property; or
- (c) the joint use or ownership of real or personal property.

Appointment of mediator (2) The Minister, on the recommendation of the Planning and Implementation Commission, may appoint a mediator to confer with one or more public boards and one or more Roman Catholic school boards and to endeavour to effect an agreement between or among the boards on the matters that the Commission has specified must be resolved between them.

Duties of mediator (3) The mediator shall confer with the boards and endeavour to effect an agreement and shall report the result to the Minister.

Duties of boards (4) Each board shall co-operate with the mediator and shall provide forthwith to the mediator such information as is requested by the mediator, and the mediator may request the provision of such information as the mediator considers relevant to the matters to be resolved.

Remuneration and expenses

(5) The mediator shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council, and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred in the course of his or her duties.

Appointment of tribunal to resolve matters **136x.**—(1) If a mediator reports to the Minister that the mediator was unable to effect an agreement, the Minister shall

appoint a tribunal of not more than three persons to hear and decide the matters that must be resolved.

(2) The Minister shall designate one of the members of the Head of tribunal to be the head of the tribunal.

(3) No person is eligible to be a member of a tribunal who is or has been a member of a board that is a party to the proceeding before the tribunal or who is acting or has, within a period of six months preceding the date of the designation of the head of the tribunal, acted as solicitor, counsel or agent of either of the parties.

Eligibility of members

(4) If a member of the tribunal is unable to enter on or to Replacement carry on his or her duties so as to enable a decision to be made within sixty days after the date of the designation of the head of the tribunal, or within such longer period of time as may be fixed in writing by the tribunal and consented to by the Minister, or ceases to act by reason of withdrawal or death before the tribunal has completed its work, a replacement shall be appointed by the Minister and the tribunal shall continue to function as if the replacement member were a member of the tribunal from the beginning.

of members

- (5) The tribunal shall appoint a time and place for a hearing Notice and shall give notice thereof to the parties.
- (6) The parties to the hearing are the public board or public Parties boards and the Roman Catholic school board or Roman Catholic school boards that are unable to effect an agreement on the matters that must be resolved between or among them.
- (7) In deciding the matters that must be resolved, the tribu- Criteria nal shall endeavour to permit the Roman Catholic school board or Roman Catholic school boards to provide secondary education and shall endeavour to promote the best interests of public education in Ontario.

(8) The tribunal, in its decision, may provide for,

Decision

- (a) the transfer of the use of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;
- (b) the transfer of the ownership of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;

(c) the joint use of real property or personal property, or both, by a public board that is a party and a Roman Catholic school board that is a party in such proportions as the tribunal specifies,

or any combination of them.

Delivery of decision

(9) The tribunal shall give to the Minister its decision in writing, together with written reasons therefor, and the record of the proceeding forthwith after making the decision.

Order by Minister

(10) The Minister shall issue and transmit to the parties an order in the terms of the decision, together with a copy of the decision and the written reasons for the decision.

Retransfer

- (11) Real property that is the subject of an order under subsection (10) is not subject to expropriation by a public board, but upon application the Minister with the approval of the Lieutenant Governor in Council may,
 - (a) order the retransfer, subject to such conditions as are specified in the retransfer order, of the use or ownership of all or part of the real property or personal property, or both, that was transferred in accordance with an order under subsection (10);
 - (b) by order vary or rescind an order under subsection (10) that provides for the joint use of any real property or personal property.

Application of R.S.O. 1980, c. 148

(12) The Expropriations Act does not apply in respect of the transfer or retransfer of real property or personal property in accordance with an order under this section.

Enforcement of order (13) The Minister shall cause a copy of an order made under this section to be filed in the office of the Registrar of the Supreme Court, exclusive of the reasons therefor, and the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such.

L.G. in C. may confirm, vary or rescind order

- (14) Upon the petition of a party to a proceeding under this section, filed with the Clerk of the Executive Council within twenty-eight days after the date of an order by the Minister in the proceeding, the Lieutenant Governor in Council may,
 - (a) confirm, vary or rescind the whole or any part of the order; or
 - (b) require the Minister to appoint a new tribunal to hold a new hearing of the whole or any part of the

matter upon which the order of the Minister was based.

(15) The order of the Minister after a new hearing ordered by the Lieutenant Governor in Council is not subject to petition under this section.

(16) Upon the filing of a petition, the Minister shall file Filing of with the Clerk of the Executive Council the decision and writ-documents on petition ten reasons therefor of the tribunal and a copy of the order of the Minister

(17) The Lieutenant Governor in Council is not required to Hearing by hold or to afford to any person an opportunity for a hearing before deciding upon a petition under this section.

L.G. in C.

(18) The head of the tribunal and the other members of the Remuneratribunal who are not officers in the Public Service of Ontario expenses shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

136xa. Notwithstanding any other provision of this Act, Limitation the ownership of real property used for purposes of a public property secondary school shall not be transferred to a Roman Catholic transfers school board before the fifth anniversary of the day this section comes into force and no mediator under section 136w or tribunal under section 136x shall make a decision affecting the ownership of any such real property before that anniversary but this section does not apply so as to prevent such a transfer before that anniversary if the public board and the Roman Catholic school board agree and the Minister approves of the transfer.

136xb. The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing any matter that is referred to in sections 136a to 136y as prescribed by the regulations;
- prescribing the method of determining persons to be designated under subsection 136-1 (1) and the matters referred to in subsections 136-1 (2) and (3):
- requiring public boards and Roman Catholic school boards to confer with the Planning and Implementation Commission and branch affiliates on such matters as may be prescribed.

Conflict

136y. The resolution of a matter between a public board and a Roman Catholic school board under sections 136a to 136xb, except as specifically provided for in those sections, is a nullity if the result is inconsistent with any other Act, any other provision of this Act or a regulation under any Act.

COMPLEMENTARY AMENDMENTS

3.—(1) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is further amended by adding thereto the following subsection:

Secondary school purposes

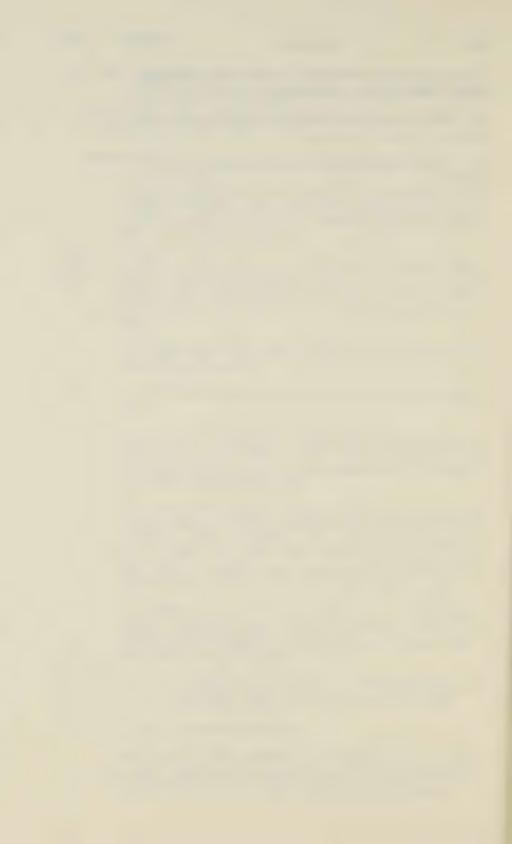
- (9) The assessment of a corporation for separate school purposes under subsections (1) to (8) in respect of a Roman Catholic school board applies in the same manner in relation to secondary school purposes as to elementary school purposes.
- (2) Section 186 of the said Act is amended by adding thereto the following subsection:

Exception

- (7) This section does not apply to arbitrations under section 136m.
- **4.** Section 5 of *The Essex County French-language Secondary School Act, 1977*, being chapter 5, shall not be construed to prevent the conveyance of the School mentioned in the said Act to a Roman Catholic school board.
- 5. Clause 154 (4) (b) of the Regional Municipality of Ottawa-Carleton Act, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed at the end of the first calendar year in which The Carleton Roman Catholic Separate School Board makes an election that is approved by the Minister of Education under section 136a or 136f of the Education Act.
- 6. Subsection 121 (2) of the Municipality of Metropolitan Toronto Act, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 11, is further amended,
 - (a) by adding "and" at the end of clause (c) and by striking out "and" at the end of clause (d); and
 - (b) by repealing clause (e),

at the end of the first calendar year in which the Metropolitan Separate School Board makes an election that is approved by the Minister under section 136a or 136f of the *Education Act*.

- 7. Sections 136r to 136x of the *Education Act*, as enacted by Repeal section 2 of this Act, are repealed on the 1st day of July, 1995.
- 8. This Act comes into force on the day it receives Royal Commencement
- 9. The short title of this Act is the Education Amendment Short title Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

ON

56

Bill31

An Act to amend the Homes for the Aged and Rest Homes Act

Mr. Warner



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of this Bill is to prevent the discharge of a resident from a rest home or a home for the aged without the approval of a physician independent of the home and without ensuring that there are suitable alternative accommodations for the resident. The amendment is similar to the requirements for discharge from a nursing home under the regulations to the *Nursing Homes Act*.

Bill 31 1986

An Act to amend the Homes for the Aged and Rest Homes Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 19 of the Homes for the Aged and Rest Homes Act, being chapter 203 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- 19.—(1) Except as provided in subsection (3), no resident Discharge of shall be discharged from a home or joint home unless,

- a discharge order by a physician other than the physician of the home or joint home has been recorded on the medical record:
- (b) arrangements have been made to provide services and accommodation suitable to meet the needs of the resident being discharged; and
- (c) the resident and the resident's next-of-kin or legal representative, as the case may be, have been notified of the proposed discharge twenty-four hours prior to the discharge of the resident from the nursing home.
- (2) When a resident of a home or joint home is to be Exception admitted to a hospital and circumstances do not permit the twenty-four hours notice required under clause (1) (c), the next-of-kin or legal representative shall be notified as soon as possible of the proposed discharge of the resident.
- (3) A resident who wishes to terminate arrangements for Consent care with a home or joint home may be discharged only after the resident, or where he or she lacks the mental capacity, the resident's legal representative has signed a statement declaring that the resident wishes to leave the nursing home and the res-

ident's next-of-kin or legal representative, as the case may be, has been notified twenty-four hours prior to the discharge.

Commencement 2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the Homes for the Aged and Rest Homes Amendment Act, 1986.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill32

An Act to amend the Tobacco Tax Act

The Hon. R. Nixon *Minister of Revenue*



1st Reading 2nd Reading 3rd Reading Royal Assent

EXPLANATORY NOTES

SECTION 1. The effect of the re-enactment of clauses 2 (1) (a) and (b) of the Act is to increase (effective January 1st, 1987) the rate of tax on cigarettes from 2.7 cents per cigarette to 2.83 cents per cigarette and on tobacco, other than cigarettes or cigars, from 1.5 cents per gram to 1.6 cents per gram. Subsection 2 (1) of the Act now reads in part as follows:

- (1) Every consumer shall pay to the Treasurer a tax at the rate of,
 - (a) 2.7 cents on every cigarette purchased by the consumer;
 - (b) 1.5 cents per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by the consumer; and

SECTION 2. The proposed new section 9a of the Act provides for the filing of information returns by tobacco manufacturers, importers and wholesale dealers to assist in the administration and enforcement of the Act.

Bill 32 1986

An Act to amend the Tobacco Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clauses 2 (1) (a) and (b) of the *Tobacco Tax Act*, being chapter 502 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1985, chapter 22, section 2, are repealed and the following substituted therefor:
 - (a) 2.83 cents on every cigarette purchased by the consumer;
 - (b) 1.6 cents per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by the consumer; and
- 2. The said Act is amended by adding thereto the following section:
- **9a.** Every person who is a manufacturer, importer or Information wholesale dealer of tobacco shall deliver to the Minister, without notice or demand, such returns at such time and in such manner as the regulations prescribe.
- 3.—(1) This Act, except section 1, comes into force on the Commence-day it receives Royal Assent.
- (2) Section 1 comes into force on the 1st day of January, Idem 1987.
- **4.** The short title of this Act is the *Tobacco Tax Amendment* Short title Act, 1986.



Gover

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill32

(Chapter 41 Statutes of Ontario, 1986)

An Act to amend the Tobacco Tax Act

The Hon, R. Nixon Minister of Revenue

1st Reading May 13th, 1986

2nd Reading October 27th, 1986

3rd Reading November 4th, 1986

Royal Assent November 4th, 1986





Bill 32

1986

An Act to amend the Tobacco Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clauses 2 (1) (a) and (b) of the Tobacco Tax Act, being chapter 502 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1985, chapter 22, section 2, are repealed and the following substituted therefor:
 - 2.83 cents on every cigarette purchased by the con-(a) sumer;
 - (b) 1.6 cents per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by the consumer; and
- 2. The said Act is amended by adding thereto the following section:
- 9a. Every person who is a manufacturer, importer or Information wholesale dealer of tobacco shall deliver to the Minister, without notice or demand, such returns at such time and in such manner as the regulations prescribe.

- 3.—(1) This Act, except section 1, comes into force on the Commencement day it receives Royal Assent.
- (2) Section 1 comes into force on the 1st day of January, Idem 1987.
- 4. The short title of this Act is the Tobacco Tax Amendment Short title Act. 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

ON

6

Bill33

An Act to amend the Planning Act, 1983

Mr. Swart



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

This Bill provides the means to ensure priority in preserving Ontario's best agricultural land for food growing purposes.

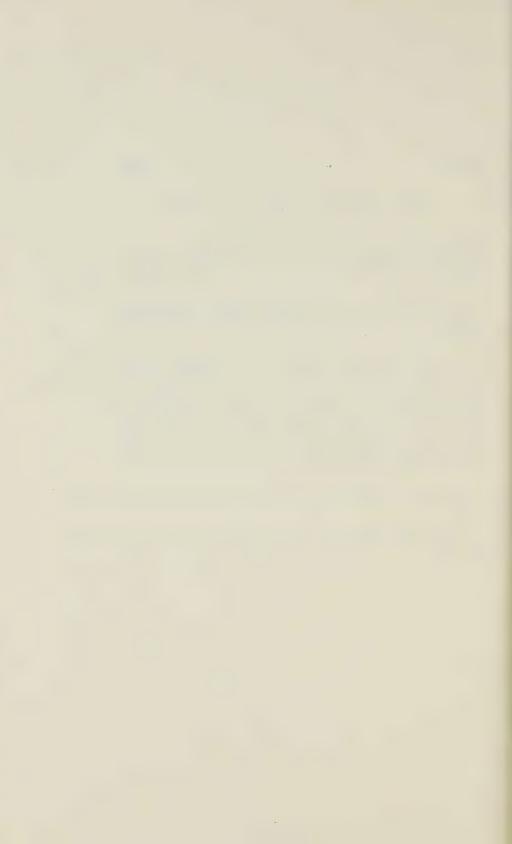
Bill 33 1986

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Planning Act, 1983, being chapter 1 of the Statutes of Ontario, 1983, is amended by adding thereto the following section:
- 2a. The Minister, the council of every municipality, every Preservation local board, every minister of the Crown and every ministry, of agricultural board, commission or agency of the government, including the lands Municipal Board and Ontario Hydro shall, in exercising any authority that affects any planning matter, give priority to the preservation, for agricultural purposes, of all specialty crop lands and of lands designated as Class 1, 2 or 3 by the Canada Land Inventory of Soil Capability.

- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Planning Amendment Short title Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

A20N B

Bill34

An Act to provide for Freedom of Information and Protection of Individual Privacy

The Hon. I. Scott

Attorney General



1st Reading April 22nd, 1986 2nd Reading

3rd Reading Royal Assent

EXPLANATORY NOTES

The Bill substantially implements the recommendations of the Report of the Commission on Freedom of Information and Individual Privacy (Williams Report).

PART I makes a minister who is to be designated responsible for administration of the Act and establishes the office of Information and Privacy Commissioner. The Commissioner is appointed by the Legislature and the office is set up in a manner similar to the Ombudsman's office.

PART II provides a right of access to government information subject only to specified exemptions. Also provided are the procedure to be followed in seeking access and the manner in which access is to be given. Time limits are imposed on the government for answering a request for access and providing the information. Provision is made for protecting those other persons whose privacy or rights might be affected by release of information. Government institutions are required to make information available to the public including how to request information, how the institution runs, what the institution does and guidelines used by the institution in making various decisions. They are also required to make annual reports with regard to the operation of this Act.

PART III provides for the protection of individual privacy by regulating the collection and disposal of personal information and regulating the circumstances under which personal information is to be used. Provision is made for organizing personal information into indexed data banks and for noting how personal information may be used. The individual to whom the information relates is given a right of access and a right of correction.

PART IV provides for an appeal to the Commissioner from a decision made under the Act. Provision is made for mediation, failing which the Commissioner is to hold an inquiry. Procedural safeguards are provided for the inquiry. The onus is placed on the government to prove that information should not be released. The Commissioner is empowered to make an order after the inquiry.

PART V provides for setting fees for the retrieval of information and for waiving those fees under some circumstances. This part also deals with the Commissioner's annual report, additional powers and duties, offences and other general matters.

Bill 34

1986

An Act to provide for Freedom of Information and Protection of Individual Privacy

CONTENTS

Se	cti	on

- 1. Purposes
- 2. Definitions

PART I ADMINISTRATION

- 3. Responsible minister
- 4. Information and Privacy
 Commissioner
- 5. Nature of employment
- 6. Salary and expenses
- 7. Temporary Commissioner
- 8. Staff
- 9. Administration

PART II FREEDOM OF INFORMATION

ACCESS TO INFORMATION

- 10. Right of Access
- 11. Obligation to disclose

EXEMPTIONS

- 12. Cabinet records
- 13. Advice to government
- 14. Law enforcement
- 15. Relations with other governments
- 16. Defence
- 17. Third party information
- 18. Economic and other interests of Ontario
- 19. Solicitor client privilege
- 20. Danger to safety or health
- 21. Personal privacy
- 22. Information to be published
- 23. Severability of record

ACCESS PROCEDURE

- 24. Request
- 25. Request to be forwarded or transferred
- 26. Notice by head

Section

- 27. Extension of time
- 28. Affected persons
- 29. Contents of notice of refusal
- 30. Access to record

INFORMATION TO BE PUBLISHED OR AVAILABLE

- 31. Publication of information re institutions
- 32. Operation of institutions
- 33. Institution documents
- 34. Annual report of head

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

- 35. Collection of personal information
- 36. Manner of collection
- 37. Retention and disposal of personal information

USE AND DISCLOSURE OF PERSONAL INFORMATION

- 38. Use of personal information
- 39. Where disclosure permitted
- 40. Data banks
- 41. Personal information data bank index
- 42. Retention of record of use

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

43. Right of individual to whom personal information relates to access and correction

nd

Section	Section
44. Procedure 45. Exemptions	56. Regulations
PART IV APPEAL 46. Right to appeal and application 47. Mediator to try to effect settlement 48. Inquiry 49. Onus 50. Order 51. Confidentiality 52. Delegation by Commissioner	 57. Offences 58. Delegation of head's powers an liability of Crown 59. Crown privilege 60. Review of other Acts 61. Review of this Act 62. Public Service Act amended
PART V GENERAL 53. Costs 54. Annual report of Commission 55. Powers and duties of Commission	63. Application64. Crown bound65. Commencement66. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

1. The purposes of this Act are,

- (a) to provide a right of access to information under the control of an institution in accordance with the principles that,
 - (i) government information should be available to the public,
 - (ii) necessary exceptions to the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by an institution and to provide individuals with a right of access to that information.

Definitions

2. In this Act,

"data bank" means a collection of personal information which is organized and capable of being retrieved;

"head", in respect of an institution, means,

- (a) in the case of a ministry, the minister of the Crown who presides over the ministry, and
- (b) in the case of any other institution, the person designated as head of that institution in the regulations;
- "Information and Privacy Commissioner" and "Commissioner" mean the Commissioner appointed under subsection 4 (1);
- "institution" means,
 - (a) a ministry of the Government of Ontario, and
 - (b) any agency, board, commission, corporation or other body designated as an institution in the regulations:
- "personal information" means recorded information about an identifiable individual, including,
 - (a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual,
 - (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.
 - (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, telephone number, fingerprints or blood type of the individual,
 - (e) the personal opinions or views of the individual except where they relate to another individual,
 - (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
 - (g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that does not exist but is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

"responsible minister" means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3.

PART I

ADMINISTRATION

Responsible minister

3. The Lieutenant Governor in Council may by order designate a minister of the Crown to be the responsible minister for the purposes of this Act.

Information and Privacy Commissioner

4.—(1) There shall be appointed, as an officer of the Legislature, an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by this Act.

Appointment

(2) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Term and removal from office

(3) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

5

(4) The Commissioner may appoint an officer of his or her Assistant staff to be Assistant Information and Privacy Commissioner.

5.—(1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

Nature of employment

(2) The Public Service Act and the Public Service Superan- R.S.O. 1980, nuation Act do not apply to the Commissioner.

cc. 418, 419 not to apply

- 6.—(1) The Commissioner shall be paid a salary to be Salary fixed by the Lieutenant Governor in Council.
- (2) The salary of the Commissioner shall not be reduced Idem except on the address of the Assembly.
- (3) The Commissioner is entitled to be paid reasonable tra- Expenses velling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act.

(4) Part II of the Legislative Assembly Retirement Allowan- Pension ces Act, except sections 15 and 16 and subsection 18 (5), R.S.O. 1980, applies with necessary modifications to the Commissioner in the same manner as if the Commissioner were a member of the Legislative Assembly and for the purpose,

"average annual remuneration" means the average annual salary of the Commissioner during any five years of his or her service, which years need not be consecutive, during which his or her salary was highest;

"remuneration" means the salary of the Commissioner.

7. If, while the Legislature is not in session, the Commis-Temporary sioner dies, resigns or is unable or neglects to perform the functions of the office of Commissioner, the Lieutenant Governor in Council may appoint a Temporary Commissioner to hold office for a term of not more than six months who shall, while in such office, have the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix.

8.—(1) Subject to the approval of the Lieutenant Gover-Staff nor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment.

Benefits

- (2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,
 - (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;
 - (b) plans for group life insurance, medical-surgical insurance or long term income protection; and
 - (c) the granting of leave of absence,

R.S.O. 1980, c. 418 apply to the employees of the Commissioner and where such benefits are provided for in regulations made under the *Public Service Act*, the Commissioner, or any person authorized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under such regulations.

Employees' superannuation benefits
R.S.O. 1980, c. 419

(3) The *Public Service Superannuation Act* applies to the permanent and probationary staff of the Commissioner as though the Commissioner were a commission designated by the Lieutenant Governor in Council under section 28 of that Act.

Premises and supplies

9.—(1) The Commissoner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

Salary and expenses

(2) The salary of the Commissioner and the expenses required for the operation of the office are payable out of moneys appropriated therefor by the Legislature.

Audit

(3) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Provincial Auditor.

PART II

FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of access

10. Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

Obligation to disclose 11. Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or

persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

EXEMPTIONS

- **12.**—(1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council, including,
 - (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
 - (b) a record containing proposals or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
 - (c) a record containing background explanations, analyses of problems or policy options submitted or prepared for submission to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
 - (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
 - (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
 - (f) draft legislation or regulations.
- (2) Despite subsection (1), a head shall not refuse to dis- Exception close a record under subsection (1) where,
 - (a) the record is more than twenty years old; or
 - (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

Advice to government

13.—(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Exception

- (2) Despite subsection (1), a head shall not refuse to disclose,
 - (a) factual material;
 - (b) a statistical survey;
 - (c) a report by a valuator, whether or not the valuator is an officer of the institution;
 - (d) an environmental impact statement or similar record;
 - (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;
 - (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;
 - (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
 - (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
 - (i) a final plan or proposal for the reorganization of the function of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council;
 - (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council;

- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (l) a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, and any reason explaining the decision, order or ruling, whether or not the reason,
 - (i) is contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) was given by the officer who made the decision, order or ruling or was incorporated by reference into the decision, order or ruling.
- (3) Despite subsection (1), a head shall not refuse to disclose a record under subsection (1) where the record is more than twenty years old.

14.—(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used;
- (d) disclose the identity of a confidential source of information, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

- (g) interfere with the gathering of or reveal intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (1) facilitate the commission of an offence or hamper the control of crime.

Idem

- (2) A head may refuse to disclose a record,
 - (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
 - (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
 - (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to confirm or deny existence of record Review

- (3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.
- (4) Where a head refuses to confirm or deny the existence of a record, the person who made the request may appeal to the Commissioner for a review of the head's decision.

15. A head may refuse to disclose a record where the dis-Relations closure could reasonably be expected to.

with other governments

- (a) prejudice the conduct of intergovernmental relations by the Government of Canada or an institution:
- (b) reveal information received in confidence from another government or its agencies by an institution: or
- (c) reveal information received in confidence from an international organization of states or a body thereof by an institution.

and shall not disclose any such record without the prior approval of the Executive Council.

16. A head may refuse to disclose a record where the dis- Defence closure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

17.—(1) A head may refuse to disclose a record that Third party reveals a trade secret or scientific, technical, commercial or financial information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in information of the same kind no longer being supplied to the institution, where,
 - (i) the information was supplied to the institution on a confidential basis, and
 - (ii) it is in the public interest that similar information continue to be supplied to the institution; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Exception

(2) Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of any person, group of persons, or organization in its continued confidentiality.

Economic and other interests of Ontario

- **18.**—(1) A head may refuse to disclose a record that contains,
 - (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
 - (b) scientific or technical information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
 - (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
 - (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
 - (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
 - (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
 - (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.
- (3) Subsection (1) does not apply to a record where the Idem public interest in its disclosure outweighs the interest of the Government of Ontario in its continued confidentiality.

19. A head may refuse to disclose a record that is subject Solicitorto solicitor-client privilege.

client privilege

20. A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the or health safety or health of an individual.

21.—(1) A head shall refuse to disclose personal informa- Personal tion to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access:
- in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure:
- (e) for a research purpose if,
 - (i) the use of disclosure is consistent with the conditions or reasonable expectations of use and disclosure under which the personal information was provided, collected or obtained.
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accom-

plished unless the information is provided in individually identifiable form, and

- (iii) terms and conditions relating to,
 - (A) security and confidentiality,
 - (B) the removal or destruction of the individual identifier or identifiers associated with the record at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research or statistical project, and
 - (C) the prohibition of any subsequent use or disclosure of the record in individually identifiable form without the express authorization of the institution,

have been approved by the responsible minister and the person obtaining the record has filed with the responsible minister a written statement indicating that the person understands and will abide by the terms and conditions; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re invasion of privacy

- (2) A person, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider whether,
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
 - (b) access to the personal information may promote public health and safety;
 - (c) access to the personal information will promote informed choice in the purchase of goods and services;
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable:
- (h) the personal information has been supplied by the individual to whom the information relates in confidence: and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record,

and shall take into account any other relevant circumstance.

(3) A disclosure of personal information is presumed to Presumed constitute an unjustified invasion of personal privacy where of privacy the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, except for personal information confirming an individual's presence in a health care facility;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels:
- (d) relates to employment history;
- (e) was obtained on an income tax return or similar return or gathered by an institution for the purpose of collecting an income tax or similar tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- consists of personal recommendations or evalua-(g) tions, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin or religious or political beliefs and associations.
- (4) Despite subsection (3), clause (1) (f) does not apply to a Limitation record which,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister:
- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario.

Information soon to be published

- 22. A head may refuse to disclose a record where,
 - (a) the record or the information contained in the record has been published or is currently available to the public; or
 - (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Severability of record

23. Where an institution receives a request for access to a record that falls under one of the exemptions under sections 12 to 22 and that record contains information which, if it were a separate record, would be required to be disclosed, the head shall release the information that would be required to be disclosed unless the information that falls under one of the exemptions is not reasonably severable from the whole record.

ACCESS PROCEDURE

Request

24.—(1) A person seeking access to a record shall make a request therefor in writing to the institution that the person

believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

(2) If the request does not sufficiently describe the record Sufficiency sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

25.—(1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within 15 days after the request is received,

Request to be forwarded

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution
- (2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Transfer of

(3) For the purpose of subsection (2), an institution has a Greater greater interest in a record than another institution if.

- the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.
- (4) Where a request is forwarded or transferred under sub- When section (1) or (2), the request shall be deemed to have been made to the institution to which it is forwarded or transferred deemed on the day the institution to which the request was originally made received it.

request made

26. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the

Notice by head institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, or where necessary cause the record to be produced.

Extension of time

- **27.**—(1) A head may extend the time limit set out in subsection 25 (1) or (2) or section 26 for a period of time that is reasonable in the circumstances, where.
 - (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit set out in subsection 25 (1) or (2) or section 26 would unreasonably interfere with the operations of the institution; or
 - (b) consultations that cannot reasonably be completed within the time limit set out in subsection 25 (1) or (2) or section 26 are necessary to comply with the request.

Notice of extension

- (2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,
 - (a) the length of the extension;
 - (b) the reason for the extension; and
 - (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to affected person

- **28.**—(1) Before a head grants a request for access to a record,
 - (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
 - (b) that is personal information coming within the exception in clause 21 (1) (f),

the head shall, where practicable, within thirty days after the request for access is received, give written notice in accordance with subsection (2) to the person to whom the information relates.

(2) The notice shall contain,

Contents of notice

- a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.
- (3) A head may extend the time set out in subsection (1) in Extension respect of a request under this Act where the time limit set out in section 26 is extended under section 27 in respect of the same request, but no extension period under this subsection shall exceed the period of the extension under section 27.

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

Notice of

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will after twenty-one days decide whether or not to disclose the record.
- (5) Where a notice is given under subsection (1), the person Represento whom the information relates may, within twenty days after re disclosure the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

(6) Representations under subsection (5) shall be made in Represenwriting unless the head permits them to be made orally.

tation in writing

(7) The head shall, within thirty days after the notice under Decision re subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

Notice of head's decision to disclose

- (8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,
 - (a) the person to whom the information relates may ask the Commissioner to review the decision within twenty days after the notice is given; and
 - (b) the person who made the request will be given access thereto or to a part thereof, unless within twenty days after the notice is given, a review of the decision is requested.

Access to be given unless affected person appeals (9) Where, under subsection 27 (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof twenty days after notice is given under subsection 27 (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of notice of refusal

- **29.**—(1) Where a head refuses to give access to a record or a part thereof under section 25, the head shall state in the notice given under section 26,
 - (a) where the record does not exist or cannot be produced, that it does not exist or cannot be produced;
 - (b) where the record exists or can be produced,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision named in subclause(i) applies to the record,
 - (iii) the name and office of the person responsible for making the decision to refuse access, and

- (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.
- (2) Despite subsection (1), where a head refuses to confirm Idem or deny the existence of a record under subsection 14 (1) or (2) (law enforcement exemption), the head shall state in the notice given under section 26,
 - (a) that under subsection 14 (3) the head refuses to confirm or deny the existence of a record;
 - (b) the name and office of the person responsible for making the decision; and
 - (c) that the person who made the request may appeal to the Commissioner for a review of the decision.
- (3) Where a head refuses to disclose a record or part Idem thereof under subsection 28 (7), the head shall state in the notice given under subsection 28 (7),
 - (a) the specific provision of this Act under which access is refused:
 - (b) the reason the provision named in clause (a) applies to the record:
 - (c) the name and office of the person responsible for making the decision to refuse access; and
 - (d) that the person who made the request may appeal to the Commissioner for a review of the decision.
- (4) Where a head fails to comply with section 26 or subsec- Deemed tion 28 (7), the head is, for the purposes of this Act, deemed to have refused to give access to the record.
- **30.**—(1) Subject to subsections (2) and (3), a person who Copy of is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.
- (2) A head has discretion to allow the person who is given Access to access to the record to examine it or a part thereof in accordance with the regulations.

Idem

(3) Where a person requests the opportunity to examine a record or a part thereof for the purpose of selecting those portions that the person wishes to have copied, and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication of information re institutions

- 31. The Lieutenant Governor in Council shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,
 - (a) where a request for a record should be made;
 - (b) where the material referred to in sections 32, 33 and 34 has been made available; and
 - (c) whether the institution has a library or reading room which is available for public use, and if so, its address.

Operation of institutions

- **32.** A head shall make available for inspection and copying by the public, at an office of the institution and at another government office or a public library, a fully indexed compilation containing,
 - (a) a description of the organization and responsibilities of the institution including details of the programs and functions of each division or branch of the institution;
 - (b) a list of the general classes or types of records prepared by or in the custody or control of the institution;
 - (c) the title, business telephone number and business address of the head of the institution; and
 - (d) any amendment of information referred to in clause (a), (b) or (c) which has been made available in accordance with this section.

Institution documents

- **33.**—(1) A head shall make available, in the manner described in section 32, any document which has been prepared by the institution and issued to officers of the institution and which contains,
 - (a) interpretations of the provisions of any enactment or scheme administered by the institution where the

interpretations are to be applied by, or are to be guidelines for, any officer who determines,

- (i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme.
- (ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or
- (iii) whether to impose an obligation or liability on a person under the enactment or scheme; or
- (b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of the provisions of any enactment or scheme administered by the institution that affects the public.
- (2) A head may delete from a document made available Deletions under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head includes in the document.

- a statement of the fact that a deletion has been (a) made:
- (b) a brief statement of the nature of the record which has been deleted; and
- (c) a reference to the provision of this Act on which the head relies.
- (3) Subsections (1) and (2) apply to amendments to docu- Amendments ments.
- **34.**—(1) A head shall make an annual report, in accord-Annual report ance with subsection (2), to the Commissioner. of head
 - Contents (2) A report made under subsection (1) shall specify, of report
 - (a) the number of requests for access to records made to the institution;
 - (b) the number of refusals by the head to disclose a document, the provisions of this Act under which

- disclosure was refused and the number of occasions on which each provision was invoked;
- (c) the number of applications to the Commissioner for review of a refusal to disclose a document and the number of applications for review of a decision by the head to charge a fee or of the amount of the fee under section 53;
- (d) the amount of fees collected by the institution under section 53;
- (e) the location of any reading room or other facility provided by the institution for the use of a person wishing to inspect or copy a document possessed by the institution; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this Act.

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Definition

35.—(1) In this section and in section 36, "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act.

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of collection

- **36.**—(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,
 - (a) the individual authorizes another manner of collection;
 - (b) the personal information may be disclosed to the institution concerned under section 39;
 - (c) the Commissioner has authorized the manner of collection under clause 55 (c);

(d) the information is in a report from a reporting agency in accordance with the Consumer Reporting R.S.O. 1980,

- (e) the information is collected for the purpose of the conduct of a proceeding in a court or judicial or quasi-judicial tribunal; or
- the information is collected for the purpose of law (f) enforcement.
- (2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of.

individual

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.
- (3) Subsection (2) does not apply where the personal Exception information can be classified as an exemption under subsection 14 (1) or (2) (law enforcement).
- 37.—(1) Personal information that has been used by an Retention institution shall be retained after use by the institution for the information period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

(2) The head of a public institution shall ensure that per-Standard sonal information on the records of the institution is not used unless it is reasonably accurate and up to date.

of accuracy

- (3) Subsection (2) does not apply to personal information Exception collected for law enforcement purposes,
 - (a) where the recipient works for an institution involved in law enforcement; or
 - (b) where the head of the institution informs the recipient of the information that it may not be reliable.
- (4) A head shall dispose of personal information under the Disposal of control of the institution in accordance with the regulations information

and in accordance with any directives or guidelines issued by the responsible minister.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of personal information

- 38. Personal information under the control of an institution shall not be used by the institution without the consent of the individual to whom the information relates except,
 - (a) for the purpose for which it was obtained or compiled or for a use consistent with the purpose; or
 - (b) for a purpose for which the information may be disclosed to the institution under section 39.

Where disclosure permitted

- **39.**—(1) A head may disclose personal information under the control of the institution,
 - (a) in accordance with Part II;
 - (b) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
 - (c) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
 - (d) where disclosure is by a law enforcement institution to a law enforcement institution in a foreign country under a written agreement, treaty or legislative authority or to another law enforcement institution in Canada;
 - (e) where disclosure is to an institution to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (f) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
 - in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;

- (h) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (i) to the Provincial Auditor;
- (i) to the Ombudsman:
- (k) to the responsible minister;
- (1) to the Information and Privacy Commissioner;
- (m) to the Government of Canada in order to facilitate the auditing of shared cost programs;
- (n) to the Archives of Ontario; and
- (o) to Statistics Canada.
- (2) A head shall retain a copy of every request received by Retention of the institution under clause (1) (d) for the period of time as requests re law may be prescribed by regulation and shall, upon the request enforcement of the responsible minister, make the copy available to the responsible minister.

DATA BANKS

40. A head shall cause to be included in a data bank all Data personal information under the control of the institution that,

- (a) has been used, is being used or is available for use;
- (b) is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual.
- **41.**—(1) The responsible minister shall publish at least Personal once each year an index of all data banks containing personal data bank information setting forth, in respect of each data bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;

- (d) the principal uses of the personal information and the categories of users to whom disclosures from the system are typically made;
- (e) any other uses and purposes for which personal information in the data bank is used or disclosed on a regular basis;
- (f) the categories of individuals for whom records are maintained in the system;
- (g) the policies and practices applicable to the system with respect to storage, retrievability, access controls, retention and disposal of personal information maintained in the system; and
- (h) the title, business address and business telephone number of the official responsible for the operation of the data bank.

Availability of index

(2) The responsible minister shall cause the index referred to in subsection (1) to be made available for inspection to the public as prescribed by regulation in conformity with the principle that every person is entitled to reasonable access to the index.

Retention of record of use

42.—(1) A head shall retain a record of any use by the institution of personal information contained in a personal data bank and of any use or purpose for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 41 (1) (d) and (e) and shall attach or link the record of use to the personal information.

Record of use part of personal information

Notice and publication

- (2) A record retained under subsection (1) forms part of the personal information to which it is attached or linked.
- (3) Where the personal information in a data bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 41 (1) (d) and (e), the head shall,
 - (a) forthwith notify the responsible minister of the use or disclosure; and
 - (b) ensure that the use is included in the next statement of consistent uses set forth in the index.

Bill 34

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

43.—(1) Every individual has a right of access to,

Right of access to personal information

- any personal information about the individual contained in a data bank under the control of an institution: and
- any other personal information about the individual under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.
- (2) Every individual who is given access under subsection Right of (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein:
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.
- **44.**—(1) An individual seeking access to personal informa- Request tion about the individual shall make a request therefor in writing to the institution that the individual believes has control of the personal information and shall identify the data bank or otherwise identify the location of the personal information.

(2) Subsection 24 (2) and sections 23, 25, 26, 27 and 28 Access apply with necessary modifications to a request made under subsection (1).

procedures

(3) Subject to the regulations, where an individual is to be Manner given access to personal information requested under subsection (1), the head shall,

- (a) permit the individual to examine the personal information; or
- (b) provide the individual with a copy thereof.

Comprehensible form (4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Exemptions

- **45.** A head may refuse to disclose personal information,
 - (a) to which section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 apply;
 - (b) where the disclosure would constitute an unwarranted invasion of another individual's personal privacy;
 - (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
 - (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;
 - (e) that is a correctional record where the disclosure could reasonably be expected to,
 - (i) seriously disrupt an individual's institutional, parole or mandatory supervision program,
 - (ii) reveal information supplied in confidence, or
 - (iii) result in physical or other harm to the individual or another person; or
 - (f) that is a research or statistical record.

PART IV

APPEAL

Right to appeal

- **46.**—(1) A person who has made a request for,
 - (a) access to a record under subsection 24 (1);

(b) access to personal information under subsection 44 (1); or

FREEDOM OF INFORMATION

correction of personal information under subsection 43 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner but the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in section 13, 14, 15, 16, 17, 18, 19, 20 or 22 is not appealable.

(2) An appeal under subsection (1) shall be made within Time for thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

application

(3) Upon receiving a notice of appeal, the Commissioner Notice of shall inform the head of the institution concerned and any for appeal other affected person of the notice of appeal.

(4) The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this Act or to R.S.O. 1980, the Commissioner or the Commissioner's delegate acting c. 325 under this Act.

Application

47. The Commissioner may authorize a mediator to inves- Mediator to tigate the circumstances of any appeal and to try to effect a settlement settlement of the matter under appeal.

48.—(1) Where a settlement is not effected under section Inquiry 47, the Commissioner shall conduct an inquiry to review the head's decision.

(2) The Statutory Powers Procedure Act does not apply to an inquiry under subsection (1).

R.S.O. 1980, not to apply

(3) The inquiry may be conducted in private.

Inquiry in private

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that sioner is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

(5) The Commissioner shall not retain any information Record not obtained from a record under subsection (4).

retained by Commissioner

Examination on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, has information relating to the inquiry, and for that purpose the Commissioner may administer an oath.

Evidence privileged (9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Idem under R.S.C. 1970, c. E-10

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

Represent-

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Right to

(14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.

- **49.** The onus in an inquiry is on the head to prove that a Onus report or part of a report falls within one of the specified exemptions in this Act.
- **50.**—(1) After all of the evidence for an inquiry has been Order received, the Commissioner shall make an order disposing of the issues raised by the appeal.

(2) The Commissioner's order may contain any terms and conditions the Commissioner considers appropriate.

conditions

(3) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 46 (3) written notice of the order.

Notice of

51.—(1) The Commissioner or any person acting on behalf Confidenof or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this Act.

(2) The Commissioner or any person acting on behalf or compellable under the direction of the Commissioner is not compellable to witness give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this Act.

(3) No proceeding lies against the Commissioner or against Proceedings any person acting on behalf or under the direction of the Commissioner for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of a power, duty or function under this Act.

52.—(1) The Commissioner may in writing delegate a power or duty granted or vested in the Commissioner to an Commissioner to a Com officer or officers of the Commission, except the power to del-sioner egate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation.

(2) The Commissioner shall not delegate to a person other Exception re than the Assistant Information and Privacy Commissioner his s. 12 or 14 or her power to require a record referred to in section 12 or 14 to be produced and examined.

PART V

GENERAL

Costs

- **53.**—(1) Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,
 - (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
 - (b) the costs of preparing the record for disclosure;
 - (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
 - (d) shipping costs.

Estimate of costs

(2) The head of a public institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

Waiver of payment

- (3) A head may waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,
 - (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
 - (b) whether the payment will cause a financial hardship for the person requesting the record;
 - (c) whether dissemination of the record will benefit public health or safety;
 - (d) the amount of the costs together with the fact that the record contains personal information relating to the person who requested it; and
 - (e) any other matter prescribed in the regulations.

Review

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the head's decision to charge a fee or the amount of the fee.

(5) The costs provided in this section shall be paid and dis-Disposition tributed in the manner prescribed in the regulations.

of payments

54.—(1) The Commissioner shall make an annual report, in accordance with subsection (2), to the Speaker of the Commis-Assembly who shall cause the report to be laid before the sioner Assembly if it is in session or, if not, at the next ensuing session.

(2) A report made under subsection (1) shall contain,

Contents of report

- a summary of the nature and ultimate resolutions of appeals carried out under subsection 46 (1):
- (b) an assessment of the extent to which institutions are complying with this Act; and
- the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to the Act and regulations

55. The Commissioner may,

Powers and duties of Commis-

- offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice, and
 - (ii) destroy collections of personal information,

that contravene this Act:

- in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual:
- (d) engage in or commission research into issues affecting the purposes of this Act; and
- (e) receive representations from the public concerning the operation of this Act.
- 56. The Lieutenant Governor in Council may make regu- Regulations lations,

- (a) respecting the procedures for access to original records under section 30;
- (b) respecting the procedures for access to personal information under subsection 44 (3);
- respecting what records can be produced and how they are to be produced from machine readable records;
- (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (f) prescribing time periods for the purposes of subsections 37 (1) and 39 (2);
- (g) prescribing the payment and allocation of fees received under section 53;
- (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 53;
- designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;
- (j) designating institutions not relieved of liability in respect of a tort under subsection 58 (4);
- (k) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

57.—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a data bank that contravenes this Act; or
- (c) obtain or attempt to obtain personal information under false pretences in contravention of this Act.

(2) Every person who contravenes subsection (1) is guilty of Penalty an offence and on conviction is liable to a fine not exceeding \$2,000.

58.—(1) A head may in writing delegate a power or duty Delegation granted or vested in the head to an officer or officers of the institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

(2) No action or other proceeding lies against a head, or Protection against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

proceeding

(3) Subsection (2) does not by reason of subsections 5 (2) and (4) of the Proceedings Against the Crown Act relieve the Crown of liability in respect of a tort committed by a person preserved mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted.

Vicarious liability of Crown R.S.O. 1980,

(4) Subsection (2) does not relieve an institution that is designated by the regulations for the purposes of this section of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Vicarious liability of institutions preserved

59.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Crown privilege

(2) This Act does not affect the power of a court or a tribu- Powers of nal to compel a witness to testify or compel the production of tribunals a document.

60.—(1) The Standing Committee on Procedural Affairs Review of shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and shall make recommendations to the Legislative Assembly regarding,

other Acts

- (a) the repeal of unnecessary or inconsistent provisions; and
- (b) the amendment of provisions that do not conform to the purposes of this Act.

Other Acts

(2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.

Idem

(3) Subsection (2) shall not have effect until two years after this section comes into force.

Review of this Act

- **61.** The Standing Committee on Procedural Affairs shall, within three years after proclamation of this Act, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.
- **62.** Subsection 10 (1) of the *Public Service Act*, being chapter 418 of the Revised Statutes of Ontario, 1980, is amended by inserting after "legally" in the third line of the form of oath contained therein "authorized or".

Application

63. This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

Crown bound

64. This Act binds the Crown.

Commencement **65.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

66. The short title of this Act is the Freedom of Information and Protection of Privacy Act, 1986.

3RD SESSION, 33RD LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill34

An Act to provide for Freedom of Information and Protection of Individual Privacy

The Hon. I. Scott

Attorney General

1st Reading
2nd Reading
3rd Reading
Royal Assent



(Reprinted as amended by the Legislative Assembly Committee)

April 22nd, 1986

April 22nd, 1986

EXPLANATORY NOTES

The Bill substantially implements the recommendations of the Report of the Commission on Freedom of Information and Individual Privacy (Williams Report).

PART I makes a minister who is to be designated responsible for administration of the Act and establishes the office of Information and Privacy Commissioner. The Commissioner is appointed by the Legislature and the office is set up in a manner similar to the Ombudsman's office.

PART II provides a right of access to government information subject only to specified exemptions. Also provided are the procedure to be followed in seeking access and the manner in which access is to be given. Time limits are imposed on the government for answering a request for access and providing the information. Provision is made for protecting those other persons whose privacy or rights might be affected by release of information. The Government is required to make information about its institutions available to the public including how to request information, how the institutions run, what the institutions do and guidelines used by institutions in making various decisions. Institutions are also required to make annual reports with regard to the operation of the Act.

PART III provides for the protection of individual privacy by regulating the collection and disposal of personal information and regulating the circumstances under which personal information is to be used. Provision is made for organizing personal information into indexed personal information banks and for noting how personal information may be used. The individual to whom the information relates is given a right of access and a right of correction.

PART IV provides for an appeal to the Commissioner from a decision made under the Act. Provision is made for mediation, failing which the Commissioner is to hold an inquiry. Procedural safeguards are provided for the inquiry. The onus is placed on the government to prove that information should not be released. The Commissioner is empowered to make an order after the inquiry.

PART V provides for setting fees for the retrieval of information and for waiving those fees under some circumstances. This part also deals with the Commissioner's annual report, additional powers and duties, offences and other general matters.

Bill 34

1987

An Act to provide for Freedom of Information and Protection of Individual Privacy

CONTENTS

S			

- 1. Purposes
- 2. Definitions

PART I ADMINISTRATION

- 3. Responsible minister
- 4. Information and Privacy Commissioner
- 5. Nature of employment
- 6. Salary and expenses
- 7. Temporary Commissioner
- 8. Staff
- 9. Administration

PART II

FREEDOM OF INFORMATION ACCESS TO INFORMATION

- 10. Right of Access
- 11. Obligation to disclose

EXEMPTIONS

- 12. Cabinet records
- 13. Advice to government
- 14. Law enforcement
- 15. Relations with other governments
- 16. Defence
- 17. Third party information
- 18. Economic and other interests of Ontario
- 19. Solicitor client privilege
- 20. Danger to safety or health
- 21. Personal privacy
- 22. Information to be published
- 23. Exemptions not to apply

ACCESS PROCEDURE

- 24. Request
- 25. Request to be forwarded or transferred
- 26. Notice by head

Section

- 27. Extension of time
- 28. Affected persons
- 29. Contents of notice of refusal
- 30. Access to record

INFORMATION TO BE PUBLISHED OR AVAILABLE

- 31. Publication of information re institutions
- 32. Operation of institutions
- 33. Institution documents
- 34. Annual report of head
- 35. Documents made available
- 36. Information from heads

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

- 37. Application of Part
- 38. Collection of personal information
- 39. Manner of collection
- 40. Retention and disposal of personal information

USE AND DISCLOSURE OF PERSONAL INFORMATION

- 41. Use of personal information
- 42. Where disclosure permitted
- 43. Consistent purpose

PERSONAL INFORMATION BANKS

- 44. Personal information banks
- 45. Personal information bank index
- 46. Retention of record of use

Section

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

- 47. Right of individual to whom personal information relates to access and correction
- 48. Procedure
- 49. Exemptions

PART IV APPEAL

- 50. Right to appeal and application
- 51. Mediator to try to effect settlement
- 52. Inquiry
- 53. Burden of proof
- 54. Order
- 55. Confidentiality
- 56. Delegation by Commissioner

Section

PART V GENERAL

- 57. Costs
- 58. Annual report of Commissioner
- 59. Powers and duties of Commissioner
- 60. Regulations
- 61. Offences
- 62. Delegation of head's powers and liability of Crown
- 63. Oral requests
- 64. Crown privilege
- 65. Application of Act
- 66. Exercise of rights of deceased, etc., persons
- 67. Review of other Acts
- 68. Review of this Act
- 69. Public Service Act amended
- 70. Application
- 71. Crown bound
- 72. Commencement
- 73. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

- 1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of <u>institutions</u> in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary <u>exemptions from</u> the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by <u>institutions</u> and to provide individuals with a right of access to that information.

Definitions

2.—(1) In this Act,

"head", in respect of an institution, means,

3

- (a) in the case of a ministry, the minister of the Crown who presides over the ministry, and
- (b) in the case of any other institution, the person designated as head of that institution in the regulations;

"Information and Privacy Commissioner" and "Commissioner" mean the Commissioner appointed under subsection 4(1);

"institution" means,

- (a) a ministry of the Government of Ontario,
- (b) the corporation of every municipality in Ontario, every local board as defined by the Municipal R.S.O. 1980, Affairs Act, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario, and

(c) any agency, board, commission, corporation or other body designated as an institution in the regulations:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;
- "personal information bank" means a collection of personal information that is organized and capable of being retrieved;
- "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
 - (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
 - (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

[&]quot;regulations" means the regulations made under this Act;

- "responsible minister" means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3.
- (2) Personal information does not include information Personal about an individual who has been dead for more than thirty vears.

information

(3) Clause (b) in the definition of "institution" in sub- Effective section (1) shall not have effect until three years after this section comes into force.

(4) Clause (b) in the definition of "institution" in sub- Municipality section (1) applies to every municipality, including a metro-politan, district and regional municipality and the County of Oxford

(5) Where no head is designated under clause (b) in the Deemed definition of "head" in subsection (1) in respsect of an institution, the minister responsible for that institution shall be designation deemed to be the head of that institution.

PART I

ADMINISTRATION

3. The Lieutenant Governor in Council may by order des-Responsible ignate a minister of the Crown to be the responsible minister for the purposes of this Act.

4.—(1) There shall be appointed, as an officer of the Leg-Information islature, an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by this Act.

and Privacy Commissioner

(2) The Commissioner shall be appointed by the Lieutenant Appointment Governor in Council on the address of the Assembly.

(3) The Commissioner shall hold office for a term of five Term and years and may be reappointed for a further term or terms, but from office is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

(4) The Commissioner shall appoint an officer of his or her Assistant Commisstaff to be Assistant Information Commissioner and another sioners officer of his or her staff to be Assistant Privacy Commissioner.

Nature of employment

5.—(1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

R.S.O. 1980, cc. 418, 419 not to apply

(2) The *Public Service Act* and the *Public Service Superan*nuation Act do not apply to the Commissioner.

Salary

6.—(1) The Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council.

Idem

(2) The salary of the Commissioner shall not be reduced except on the address of the Assembly.

Expenses

(3) The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act.

Pension R.S.O. 1980, c. 236 (4) Part II of the Legislative Assembly Retirement Allowances Act, except sections 15 and 16 and subsection 18 (5), applies with necessary modifications to the Commissioner in the same manner as if the Commissioner were a member of the Legislative Assembly and for the purpose,

"average annual remuneration" means the average annual salary of the Commissioner during any five years of his or her service, which years need not be consecutive, during which his or her salary was highest;

"remuneration" means the salary of the Commissioner.

Temporary Commissioner

7. If, while the Legislature is not in session, the Commissioner dies, resigns or is unable or neglects to perform the functions of the office of Commissioner, the Lieutenant Governor in Council may appoint a Temporary Commissioner to hold office for a term of not more than six months who shall, while in such office, have the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix.

Staff

8.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment.

Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,

- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits:
- (b) plans for group life insurance, medical-surgical insurance or long term income protection; and
- (c) the granting of leave of absence,

apply to the employees of the Commissioner and where such benefits are provided for in regulations made under the Public Service Act, the Commissioner, or any person author- R.S.O. 1980, ized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under such regulations.

(3) The Public Service Superannuation Act applies to the Employees' permanent and probationary staff of the Commissioner as though the Commissioner were a commission designated by benefits the Lieutenant Governor in Council under section 28 of that R.S.O. 1980, Act

superannuation

9.—(1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

Premises and supplies

(2) The salary of the Commissioner and the expenses required for the operation of the office are payable out of moneys appropriated therefor by the Legislature.

Salary and expenses

(3) The accounts and financial transactions of the office of Audit the Commissioner shall be audited annually by the Provincial Auditor.

PART II

FREEDOM OF INFORMATION

ACCESS TO RECORDS

10.—(1) Every person has a right of access to a record or Right of a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

(2) Where an institution receives a request for access to a Severability record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to disclose

11.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of notice

- (3) The notice shall contain,
 - (a) a statement that the head intends to release a record or a part of a record that may effect the interests of the person;
 - (b) a description of the contents of the record or part that relate to the person; and
 - (c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.

Representations (4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

EXEMPTIONS

Cabinet records

- **12.**—(1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council or its committees, including,
 - (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
 - (b) a record containing <u>policy options</u> or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
 - (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy:
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations.
- (2) Despite subsection (1), a head shall not refuse under Exception subsection (1) to disclose a record where,
 - (a) the record is more than twenty years old; or
 - (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.
- 13.—(1) A head may refuse to disclose a record where the Advice to disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

government

- (2) Despite subsection (1), a head shall not refuse under Exception subsection (1) to disclose a record that contains.
 - (a) factual material;
 - (b) a statistical survey;
 - (c) a report by a valuator, whether or not the valuator is an officer of the institution;
 - (d) an environmental impact statement or similar record:
 - a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;
 - a report or study on the performance or efficiency (f) of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;
- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (1) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,
 - (i) <u>are</u> contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) <u>were</u> given by the officer who made the decision, order or ruling or <u>were</u> incorporated by reference into the decision, order or ruling.
- (3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the

record as the basis for making a decision or formulating a policy.

14.—(1) A head may refuse to disclose a record where the Law enforcement disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used <u>in law enforcement;</u>
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal <u>law</u> <u>enforcement</u> intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an <u>unlawful act</u> or hamper the control of crime.

Idem

- (2) A head may refuse to disclose a record,
 - (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
 - (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
 - (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to confirm or deny existence of record Exception

- (3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.
- (4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations with other governments

- **15.** A head may refuse to disclose a record where the disclosure could reasonably be expected to,
 - (a) prejudice the conduct of intergovernmental relations by the Government of <u>Ontario</u> or an institution;
 - (b) reveal information received in confidence from another government or its agencies by an institution; or
 - (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council.

16. A head may refuse to disclose a record where the dis- Defence closure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

17.—(1) A head <u>shall</u> refuse to disclose a record that Third party reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization:
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

(2) A head may disclose a record described in subsection Consent to (1) if the person to whom the information relates consents to the disclosure.

disclosure

18.—(1) A head may refuse to disclose a record that con- Economic tains,

and other of Ontario

- trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Exception

- (2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,
 - (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
 - (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.

Solicitorclient privilege 19. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Danger to safety or health **20.** A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

21.—(1) A head shall refuse to disclose personal informa- Personal tion to any person other than the individual to whom the information relates except.

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access:
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates:
- personal information collected and maintained specifically for the purpose of creating a record available to the general public:
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure:
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) terms and conditions relating to,
 - (A) security and confidentiality,
 - (B) the removal or destruction of the individual identifier or identifiers associated with the record at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research or statistical project, and
 - (C) the prohibition of any subsequent use or disclosure of the record in individually identifiable form without the express authorization of the institution,

have been approved by the responsible minister and the person obtaining the record has filed with the responsible minister a written statement indicating that the person understands and will abide by the terms and conditions; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re invasion of privacy

- (2) A <u>head</u>, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider <u>all the relevant circumstances</u>, including whether.
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
 - (b) access to the personal information may promote public health and safety;
 - access to the personal information will promote informed choice in the purchase of goods and services;
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
 - (f) the personal information is highly sensitive;
 - (g) the personal information is unlikely to be accurate or reliable;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
 - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

Presumed invasion of privacy

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation:
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels:
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- describes an individual's finances, income, assets, (f) liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;
- indicates the individual's racial or ethnic origin, sex-(h) ual orientation or religious or political beliefs or associations.

(4) Despite subsection (3), <u>a disclosure does not constitute</u> Limitation an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister:
- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where.
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

(ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario.

Refusal to confirm or deny existence of record (5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Information soon to be published

- 22. A head may refuse to disclose a record where,
 - (a) the record or the information contained in the record has been published or is currently available to the public; or
 - (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions not to apply

23. An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

ACCESS PROCEDURE

Request

24.—(1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of detail (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Request to be forwarded

- 25.—(1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within 15 days after the request is received,
 - (a) forward the request to the other institution; and

- (b) give written notice to the person who made the request that it has been forwarded to the other institution.
- (2) Where an institution receives a request for access to a Transfer of record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

(3) For the purpose of subsection (2), another institution Greater has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.
- (4) Where a request is forwarded or transferred under sub- When section (1) or (2), the request shall be deemed to have been transfer request made to the institution to which it is forwarded or transferred deemed on the day the institution to which the request was originally made received it.

transferred

26. Where a person requests access to a record, the head Notice of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty days after the request is received.

by head

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.
- **27.**—(1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

Notice of extension

- (2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,
 - (a) the length of the extension;
 - (b) the reason for the extension; and
 - (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to affected person

- **28.**—(1) Before a head grants a request for access to a record,
 - (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
 - (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

Contents of notice

- (2) The notice shall contain,
 - (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
 - (b) a description of the contents of the record or part thereof that relate to the person; and
 - (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

(3) The notice referred to in subsection (1) shall be given Time for within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit.

(4) Where a head gives notice to a person under subsection Notice of (1), the head shall also give the person who made the request written notice of delay, setting out,

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.
- (5) Where a notice is given under subsection (1), the person Represento whom the information relates may, within twenty days after re disclosure the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

(6) Representations under subsection (5) shall be made in Represenwriting unless the head permits them to be made orally.

tation in writing

(7) The head shall, within thirty days after the notice under Decision re subsection (1) is given, but not before the earlier of,

disclosure

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

(8) Where a head decides to disclose a record or part Notice of thereof under subsection (7), the head shall state in the notice decision that.

head's to disclose

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
- (b) the person who made the request will be given access to the record or to a part thereof, unless an

appeal of the decision is commenced within thirty days after the notice is given.

Access to be given unless affected person appeals (9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of notice of refusal

- **29.**—(1) Notice of refusal to give access to a record or a part thereof under section 26 shall set out,
 - (a) where there is no such record, that there is no such record; or
 - (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

- (2) Where a head refuses to confirm or deny the existence of a record as provided in subsection 14 (3) (law enforcement) or subsection 21 (5) (unjustified invasion of personal privacy), the head shall state in the notice given under section 26,
 - (a) that the head refuses to confirm or deny the existence of the record:
 - (b) the provision of this Act on which the refusal is based;
 - (c) the name and office of the person responsible for making the decision; and
 - (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) Where a head refuses to disclose a record or part thereof under subsection 28 (7), the head shall state in the notice given under subsection 28 (7),

- (a) the specific provision of this Act under which access is refused:
- (b) the reason the provision named in clause (a) applies to the record:
- the name and office of the person responsible for (c) making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.
- (4) A head who fails to give the notice required under section 26 or subsection 28 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

30.—(1) Subject to subsection (2), a person who is given Copy of access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.

(2) Where a person requests the opportunity to examine a Access to record or a part thereof and it is reasonably practicable to give record the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

(3) Where a person examines a record or a part thereof and Copy of wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

INFORMATION TO BE PUBLISHED OR AVAILABLE

31. The responsible minister shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

Publication information re institutions

- (a) where a request for a record should be made;
- (b) the name and office of the head of the institution;
- (c) where the material referred to in sections 32, 33, 34 and 45 has been made available; and

(d) whether the institution has a library or reading room which is available for public use, and if so, its address.

Operation of institutions

- **32.** The responsible minister shall cause to be published annually an indexed compilation containing,
 - (a) a description of the organization and responsibilities of each institution including details of the programs and functions of each division or branch of each institution;
 - (b) a list of the general classes or types of records prepared by or in the custody or control of each institution;
 - (c) the title, business telephone number and business address of the head of each institution; and
 - (d) any amendment of information referred to in clause (a), (b) or (c) that has been made available in accordance with this section.

Institution documents

- **33.**—(1) A head shall make available, in the manner described in section 35,
 - (a) manuals, directives or guidelines prepared by the institution, issued to its officers and containing interpretations of the provisions of any enactment or scheme administered by the institution where the interpretations are to be applied by, or are to be guidelines for, any officer who determines,
 - (i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme,
 - (ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or
 - (iii) whether to impose an obligation or liability on a person under the enactment or scheme; or
 - (b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of

the provisions of any enactment or scheme administered by the institution that affects the public.

(2) A head may delete from a document made available Deletions under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head includes in the document

- (a) a statement of the fact that a deletion has been made:
- (b) a brief statement of the nature of the record which has been deleted; and
- a reference to the provision of this Act on which the head relies.
- 34.—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Annual report of head

(2) A report made under subsection (1) shall specify,

Contents of report

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (c) for each provision of this Act in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45 (d) and (e);
- the amount of fees collected by the institution under section 57; and
- any other information indicating an effort by the institution to put into practice the purposes of this Act.
- 35.—(1) The responsible minister shall cause the materials Documents described in sections 31, 32 and 45 to be made generally available able for inspection and copying by the public and shall cause them to be made available to the public in the reading room,

library or office designated by each institution for this purpose.

Idem

(2) Every head shall cause the materials described in sections 33 and 34 to be made available to the public in the reading room, library or office designated by each institution for this purpose.

Information from heads

36. Every head shall provide to the responsible minister at the responsible minister's request, the information needed by the responsible minister to prepare the materials described in sections 31, 32 and 45.

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application of Part

37. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

<u>38.</u>—(1) In this section and in section 39, "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act.

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of collection

- **32.**—(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless.
 - (a) the individual authorizes another manner of collection;
 - (b) the personal information may be disclosed to the institution concerned under section 42;
 - (c) the Commissioner has authorized the manner of collection under clause 59 (c);
 - (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;

R.S.O. 1980, c. 89

- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service:
- the information is collected for the purpose of the (f) conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement: or
- (h) another manner of collection is authorized by or under a statute.
- (2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of.

Notice to

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.
- (3) Subsection (2) does not apply where the head may re- Exception fuse to disclose the personal information under subsection 14 (1) or (2) (law enforcement).

40.—(1) Personal information that has been used by an Retention institution shall be retained after use by the institution for the information period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

(2) The head of an institution shall take reasonable steps to Standard ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

of accuracy

- (3) Subsection (2) does not apply to personal information Exception collected for law enforcement purposes,
 - (a) where the recipient works for an institution involved in law enforcement: or

(b) where the head of the institution informs the recipient of the information that it may not be reliable.

Disposal of personal information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the responsible minister.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of personal information

- 41. An institution shall not use personal information in its custody or under its control except,
 - (a) where the person to whom the information relates has identified that information in particular and consented to its use;
 - (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
 - (c) for a purpose for which the information may be disclosed to the institution under section 42.

Where disclosure permitted

- 42. An institution shall not disclose personal information in its custody or under its control except,
 - (a) in accordance with Part II;
 - (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure:
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
 - (f) where disclosure is by a law enforcement institution,

- (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
- (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (i) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;
- (1) to the Provincial Auditor;
- (m) to the Ombudsman;
- (\underline{n}) to the responsible minister;
- (o) to the Information and Privacy Commissioner;
- (p) to the Government of Canada in order to facilitate the auditing of shared cost programs;
- (q) to the Archives of Ontario; and
- (r) to Statistics Canada.



43. Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41 (b) and 42 (c) only if the individual might reasonably have expected such a use or disclosure.

PERSONAL INFORMATION BANKS

Personal information banks

44. A head shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual.

Personal information bank index

- 45. The responsible minister shall publish at least once each year an index of all personal information banks setting forth, in respect of each personal information bank,
 - (a) its name and location;
 - (b) the legal authority for its establishment;
 - (c) the types of personal information maintained in it;
 - (d) the principal uses of the personal information and the typical categories of users to whom disclosures from the system are made;
 - (e) any other uses and purposes for which personal information in the <u>personal information</u> bank is used or disclosed on a regular basis;
 - (f) the categories of individuals for whom records are maintained in the system;
 - (g) the policies and practices applicable to the system with respect to storage, retrievability, access controls, retention and disposal of personal information maintained in the system; and
 - (h) the title, business address and business telephone number of the official responsible for the operation of the <u>personal information</u> bank.

Retention of record of use 46.—(1) A head shall retain a record of any use by the institution of personal information contained in a personal information bank and of any use or purpose for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth

under clauses 45 (d) and (e) and shall attach or link the record of use to the personal information.

(2) A record retained under subsection (1) forms part of the Record of personal information to which it is attached or linked.

use part of personal information

(3) Where the personal information in a personal Notice and information bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 45 (d) and (e), the head shall,

publication

- (a) forthwith notify the responsible minister of the use or disclosure: and
- (b) ensure that the use is included in the index.

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

47.—(1) Every individual has a right of access to,

Right of access to personal information

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.
- (2) Every individual who is given access under subsection Right of (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein:
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

48.—(1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has <u>custody or control of the personal information</u> and shall identify the <u>personal information</u> bank or otherwise identify the location of the personal information.

Access procedures (2) Subsections 10 (2) and 24 (2) and sections 25, 26, 27, 28 and 29 apply with necessary modifications to a request made under subsection (1).

Manner of access

- (3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,
 - (a) permit the individual to examine the personal information; or
 - (b) provide the individual with a copy thereof.

Comprehensible form (4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Exemptions

- 49. A head may refuse to disclose to the individual to whom the information relates personal information,
 - (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;
 - (b) where the disclosure would constitute an <u>unjustified</u> invasion of another individual's personal privacy;
 - (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
 - (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;

- (e) that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence; or
- that is a research or statistical record. (f)

PART IV

APPEAL

50.—(1) A person who has made a request for,

Right to appeal

- (a) access to a record under subsection 24 (1);
- (b) access to personal information under subsection 48 (1); or
- (c) correction of personal information under subsection 47 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner.

(2) An appeal under subsection (1) shall be made within Time for thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

application

(3) Upon receiving a notice of appeal, the Commissioner Notice of shall inform the head of the institution concerned and any for appeal other affected person of the notice of appeal.

(4) The Ombudsman Act does not apply in respect of a Application complaint for which an appeal is provided under this Act or to R.S.O. 1980, the Commissioner or the Commissioner's delegate acting c. 325 under this Act.

51. The Commissioner may authorize a mediator to inves- Mediator to tigate the circumstances of any appeal and to try to effect a settlement settlement of the matter under appeal.

52.—(1) Where a settlement is not effected under section Inquiry 51, the Commissioner shall conduct an inquiry to review the head's decision.

(2) The Statutory Powers Procedure Act does not apply to R.S.O. 1980, an inquiry under subsection (1).

not to apply

(3) The inquiry may be conducted in private.

Inquiry in private

Powers of Commissioner (4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not retained by Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, <u>may have</u> information relating to the inquiry, and for that purpose the Commissioner may administer an oath.

Evidence privileged (9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Idem under R.S.C. 1970. c. E-10

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

Represent-

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Com-

missioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

(14) The person who requested access to the record, the Right to head of the institution concerned and any affected party may be represented by counsel or an agent.

counsel

53. Where a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.

Burden

54.—(1) After all of the evidence for an inquiry has been Order received, the Commissioner shall make an order disposing of the issues raised by the appeal.

(2) Where the Commissioner upholds a decision of a head Idem that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

(3) The Commissioner's order may contain any terms and Terms and conditions the Commissioner considers appropriate.

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 50 (3) written notice of the order.

Notice of

55.—(1) The Commissioner or any person acting on behalf of or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this Act.

Confiden-

(2) The Commissioner or any person acting on behalf or compellable to witness give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this Act.

(3) No proceeding lies against the Commissioner or against any person acting on behalf or under the direction of the Commissioner for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of a power, duty or function under this Act.

Proceedings privileged

56.—(1) The Commissioner may in writing delegate a power or duty granted to or vested in the Commissioner to an Commis-

sioner

Bill 34

officer or officers <u>employed</u> by the <u>Commissioner</u>, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation.

Exception re records under s. 12 or 14

(2) The Commissioner shall not delegate to a person other than the Assistant Information Commissioner or the Assistant Privacy Commissioner his or her power to require a record referred to in section 12 or 14 to be produced and examined.

PART V

GENERAL

Costs

- <u>57.</u>—(1) Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,
 - (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
 - (b) the costs of preparing the record for disclosure;
 - (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
 - (d) shipping costs.

Estimate of costs

(2) The head of <u>an</u> institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

Waiver of payment

- (3) A head may waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,
 - (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
 - (b) whether the payment will cause a financial hardship for the person requesting the record;
 - (c) whether dissemination of the record will benefit public health or safety;

- (d) whether the record contains personal information relating to the person who requested it; and
- (e) any other matter prescribed in the regulations.
- (4) A person who is required to pay a fee under subsection Review (1) may ask the Commissioner to review the head's decision to charge a fee or the amount of the fee.
- (5) The costs provided in this section shall be paid and dis-Disposition tributed in the manner prescribed in the regulations.
- 58.—(1) The Commissioner shall make an annual report, Annual in accordance with subsection (2), to the Speaker of the Commis-Assembly who shall cause the report to be laid before the sioner Assembly if it is in session or, if not, at the next ensuing session.

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act in providing access to information and protection of personal privacy including.

Contents of

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1);
- (b) an assessment of the extent to which institutions are complying with this Act; and
- (c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act and regulations.

59. The Commissioner may,

Powers and duties of sioner

- (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice, and
 - (ii) destroy collections of personal information,

that contravene this Act:

- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act; and
- (e) receive representations from the public concerning the operation of this Act.

Regulations

- <u>60</u>. The Lieutenant Governor in Council may make regulations,
 - (a) respecting the procedures for access to original records under section 30;
 - (b) respecting the procedures for access to personal information under subsection 48 (3);
 - (c) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
 - (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
 - (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
 - (f) prescribing time periods for the purposes of subsection 40 (1);
 - (g) prescribing the payment and allocation of fees received under section 57;
 - (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 57;
 - (i) designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;
 - (j) prescribing forms and providing for their use;

(k) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

61.—(1) No person shall,

Offences

- (a) wilfully disclose personal information in contravention of this Act:
- (b) wilfully maintain a personal information bank that contravenes this Act:
- (c) make a request under this Act for access to or correction of personal information under false pretenses;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act:
- (e) wilfully make a false statement to, mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

(2) Every person who contravenes subsection (1) is guilty of Penalty an offence and on conviction is liable to a fine not exceeding \$5,000.

(3) A prosecution shall not be commenced under clause Consent of (1) (d), (e) or (f) without the consent of the Attorney General General.

62.—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the powers institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

(2) No action or other proceeding lies against a head, or Protection against a person acting on behalf or under the direction of the proceeding head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

(3) Subsection (2) does not by reason of subsections 5 (2) Vicarious and (4) of the Proceedings Against the Crown Act relieve the of Crown Crown of liability in respect of a tort committed by a person preserved mentioned in subsection (2) to which it would otherwise be R.S.O. 1980.

subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted.

Vicarious liability of certain institutions preserved (4) Subsection (2) does not relieve an institution of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests

<u>63.</u>—(1) Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing access preserved (2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force.

Crown privilege

64.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of courts and tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application of Act

<u>65.</u>—(1) This Act does not apply to records placed in the Archives of Ontario by or on behalf of a person or organization other than an institution.

Idem

(2) This Act does not apply to a record in respect of a patient in a psychiatric facility as defined by clause 1 (p) of the *Mental Health Act*, where the record,

R.S.O. 1980, c. 262

- (a) is a clinical record as defined by clause 29 (1) (a) of the *Mental Health Act*; or
- (b) contains information in respect of the history, assessment, diagnosis, observation, examination, care or treatment of the patient.

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding.

Exercise of rights of deceased, etc., persons

66. Any right or power conferred on an individual by this Act may be exercised,

- (a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate:
- (b) where a committee has been appointed for the individual or where the Public Trustee has become the individual's committee, by the committee; and
- where the individual is less than sixteen years of age, by a person who has lawful custody of the individual.
- 67.—(1) The Standing Committee on the Legislative Review of Assembly shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and shall make recommendations to the Legislative Assembly regarding,

- (a) the repeal of unnecessary or inconsistent provisions; and
- (b) the amendment of provisions that are inconsistent with this Act.
- (2) This Act prevails over a confidentiality provision in any Other Acts other Act unless the other Act specifically provides otherwise.
- (3) Subsection (2) shall not have effect until two years after Idem this section comes into force.
- 68. The Standing Committee on the Legislative Assembly Review of shall, within three years after proclamation of this Act, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

- 69. Subsection 10 (1) of the Public Service Act, being chapter 418 of the Revised Statutes of Ontario, 1980, is amended by inserting after "legally" in the third line of the form of oath contained therein "authorized or".
- 70. This Act applies to any record in the custody or under Application the control of an institution regardless of whether it was recorded before or after this Act comes into force.
 - **71.** This Act binds the Crown.

Commencement <u>72</u>. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

73. The short title of this Act is the Freedom of Information and Protection of Privacy Act, 1987.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill35

An Act to amend the Education Act

Mr. Grande



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Sections 34, 35 and 36 of the Act, which deal with the placement of hard to serve pupils, are replaced by a new section 34 that places a duty on boards to provide appropriate educational programs for all children and gives parents and pupils a right of appeal to the Ontario Special Education Board from all decisions of placement committees.

Bill 35 1986

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Sections 34, 35 and 36 of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

34.—(1) In this section,

Definitions

- "appropriate special education program and services", when used in reference to a pupil, means a special education program and services that,
 - (i) are implemented in accordance with an individual education plan prepared for the pupil,
 - (ii) are based on a proper assessment of the pupil's needs,
 - (iii) give the pupil an opportunity to benefit,
 - (iv) are suitable for the pupil,
 - (v) are evaluated periodically,
 - (vi) are equivalent to the educational programs and services offered to pupils who are not exceptional pupils, and
 - (vii) are offered in a proper educational setting and in the least restrictive manner possible;
- "Board" means the Ontario Special Education Board established by subsection (5);
- "hard to serve pupil" means an exceptional pupil who suffers from a mental handicap or a mental and one or more addi-

tional handicaps and for whom care and treatment are primary educational needs that cannot be met by any board;

"placement committee" means a committee of a board established to make and review placements of exceptional pupils.

Placement committee (2) Where a teacher, principal, parent or pupil considers that a pupil is an exceptional pupil, that pupil shall be referred to a placement committee.

Duties

- (3) A placement committee shall,
 - (a) determine whether a pupil is an exceptional pupil;
 - (b) determine, designate or design an appropriate special education program and services for the exceptional pupil;
 - (c) review annually the special education program and services offered each exceptional pupil; and
 - (d) refer a hard to serve pupil for whom no appropriate program and services are available to the Board.

Appeal

(4) A parent and pupil may appeal to the Board as of right any determination of a placement committee.

Ontario Special Education Board Composition (5) The Ontario Special Education Board is hereby established.

(6) The Board shall be composed of a chairman, one or more vice-chairmen and as many members equal in number representative of boards and provincial associations or organizations of parents as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Quorum

(7) The chairman or a vice-chairman, one member representing boards and one member representing provincial associations or organizations of parents are a quorum.

Panels

(8) The Board may sit in two or more panels simultaneously so long as a quorum of the Board is present in each panel.

Powers and duties of Board (9) The Board shall exercise the powers and perform the duties conferred or imposed upon it by or under this Act.

Idem

(10) Without limiting the generality of subsection (9), the Board shall,

- (a) hear and determine appeals by parents and pupils from decisions of placement committees;
- (b) determine, designate or design an appropriate special education program and services for each hard to serve pupil referred to it by a placement committee; and
- (c) review annually the appropriate special education program and services offered to each hard to serve pupil until the pupil attains the age of twenty-one years.
- (11) In the exercise of its powers under clauses (10) (b) and Idem (c), the Board, with the parents' consent, may obtain and consider the report of an assessment of the hard to serve pupil conducted by a person considered by the Board to be competent for the purpose.
- (12) Where, after a hearing, the Board has reviewed the Powers decision of a placement committee, the Board may,
 - (a) affirm the decision:
 - (b) rescind the decision and direct the placement committee to make another decision that the placement committee is authorized to make under this Act and the regulations and that the Board considers proper; or
 - rescind the decision and determine, designate or design an appropriate special education program and services for the exceptional pupil.
- (13) In the exercise of its powers under clauses (10) (b) and Purchase of (c) and clause (12) (c), the Board may order a board to purchase a special education program and services from another board, from a centre, facility, home, hospital or institution that is approved, designated, established, licensed or registered under any Act, or from any other person.

(14) The Statutory Powers Procedure Act applies to all proceedings of the Board.

(15) Without limiting the generality of subsection (14), the Code of following code of procedure applies to all proceedings of a placement committee and of the Board:

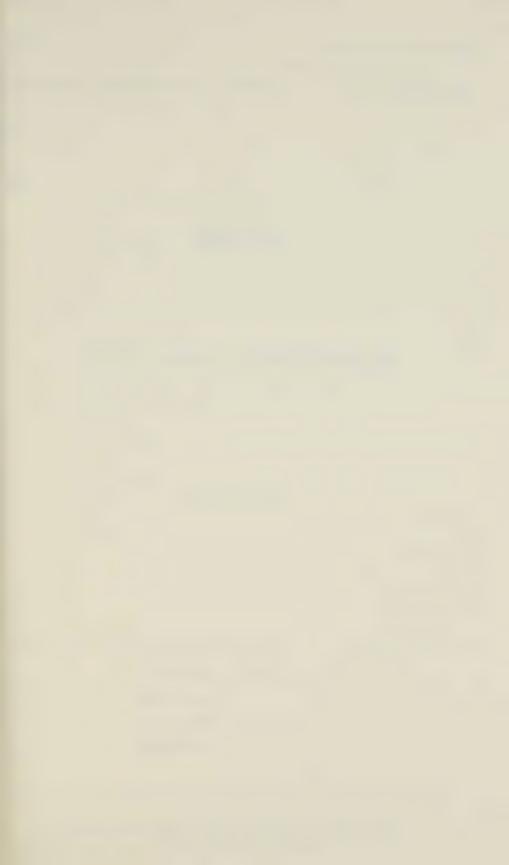
R.S.O. 1980,

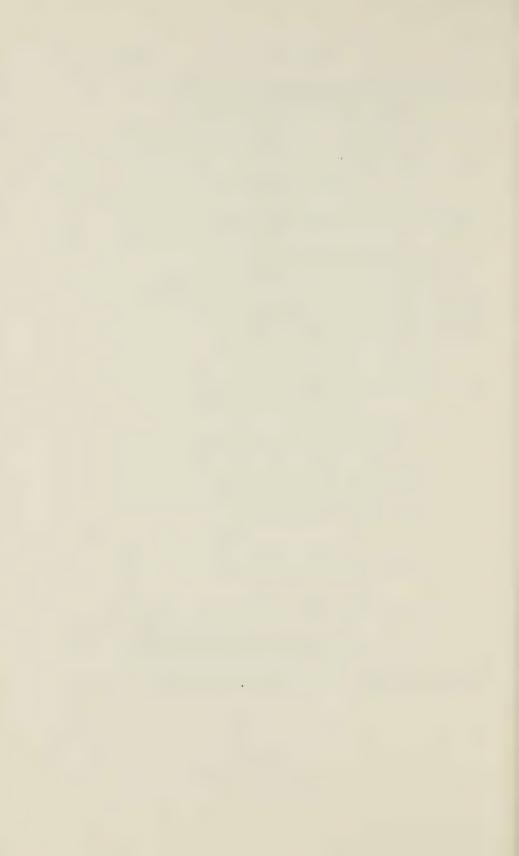
- 1. Parents and pupils shall be given reasonable notice in writing of the placement committee's meeting or the Board's hearing, as the case may be.
- 2. The notice referred to in paragraph 1 shall include,
 - i. a statement of the time, place and purpose of the meeting or hearing,
 - ii. a written description of the special education program and services proposed for the pupil,
 - iii. a written description of any alternative special program and services that are available, and
 - iv. a statement of the rights of parents and pupils to inspect all relevant reports and documents, to obtain an independent assessment and to make submissions at the meeting or hearing.
 - Parents and pupils shall have an opportunity to examine and cross-examine witnesses, present arguments and make submissions.
 - 4. Placement committee decisions and Board decisions shall be in writing, and shall include,
 - a statement of the special educational program and services proposed for the pupil by the Board, parent or pupil and of any other available alternative special program or services,
 - ii. a statement of the evidence upon which the decision was based, and
 - iii. a statement of the reasons for the decision.

Commencement 2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the Education Amendment Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill36

An Act to amend the Public Vehicles Act

Mr. Mackenzie



1st Reading

2nd Reading

3rd Reading

Royal Assent

April 22nd, 1986

EXPLANATORY NOTE

The Bill would prohibit passengers from occupying the part of a bus or streetcar to the immediate right of the driver's seat after the driver has asked them to clear that area.

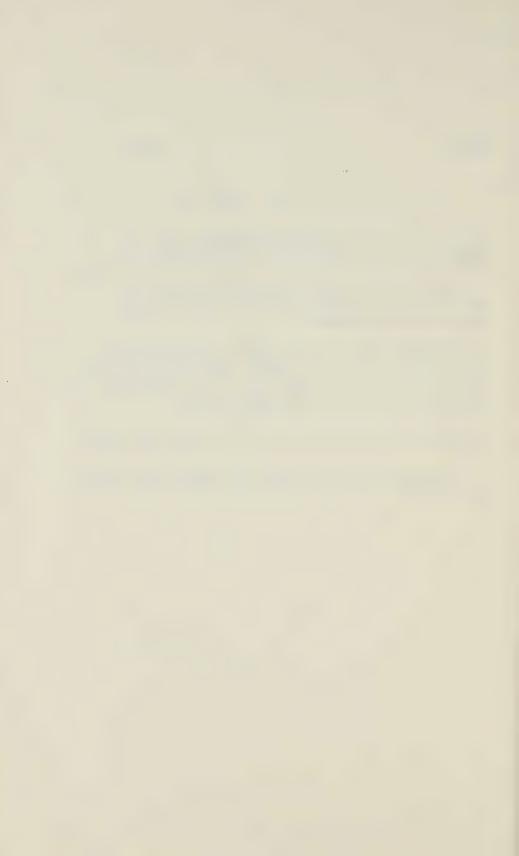
Bill 36 1986

An Act to amend the Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 23 of the Public Vehicles Act, being chapter 425 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:
- (4) No person other than the driver or operator shall No occupy any portion of a bus or streetcar, both as defined in of driver's the Highway Traffic Act, forward of the back of the driver's view or operator's seat after the driver or operator has requested R.S.O. 1980, passengers to clear that portion of the bus or streetcar.

- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Public Vehicles Amend- Short title ment Act, 1986.



35 ELIZABETH II, 1986

20N

56

Bill37

An Act to amend the Human Rights Code, 1981

Ms. Gigantes



1st Reading

April 22nd, 1986

2nd Reading
3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to prohibit discrimination on the basis of sexual orientation in connection with services, accommodation, contracts, employment and vocational associations.

Bill 37 1986

An Act to amend the Human Rights Code, 1981

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 1 of the *Human Rights Code*, 1981, being chapter 53, is amended by inserting after "sex" in the fourth line "sexual orientation".
- 2. Subsection 2 (1) of the said Act is amended by inserting after "sex" in the fourth line "sexual orientation".
- 3. Section 3 of the said Act is amended by inserting after "sex" in the third line "sexual orientation".
- **4.** Subsection 4 (1) of the said Act is amended by inserting after "sex" in the fourth line "sexual orientation".
- 5. Section 5 of the said Act is amended by inserting after "sex" in the fifth line "sexual orientation".
- 6. This Act comes into force on the day it receives Royal Commencement
- 7. The short title of this Act is the Human Rights Code Short title Amendment Act, 1986.



35 ELIZABETH II, 1986

20N

56

Bill38

An Act to amend the Ontario Lottery Corporation Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading
2nd Reading
3rd Reading
Royal Assent

May 13th, 1986



EXPLANATORY NOTE

The Bill implements the proposal in the Treasurer's Budget to remove the limitations on the use of lottery proceeds in Ontario.

Bill 38 1986

An Act to amend the Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 9 of the Ontario Lottery Corporation Act, being chapter 344 of the Revised Statutes of Ontario, 1980, is amended by striking out "to be available for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor" in the fifth, sixth and seventh lines.
- 2. This Act comes into force on the day it receives Royal Commencement.
- 3. The short title of this Act is the Ontario Lottery Corpora-Short title tion Amendment Act, 1986.



35 ELIZABETH II, 1986

ON

56

Bill39

An Act to amend the Regional Municipality of Hamilton-Wentworth Act

Mr. Allen



1st Reading April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill provides for election of the regional chairman by a general vote (rather than by the members of the Regional Council) and gives the Regional Council (rather than Cabinet) the right to appoint a majority of the members of the Hamilton-Wentworth Police Board.

Bill 39 1986

An Act to amend the Regional Municipality of Hamilton-Wentworth Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 6 of the Regional Municipality of Hamilton-Wentworth Act, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- **6.** The Regional Council shall consist of twenty-eight Composition of Regional Council
 - (a) a chairman elected by general vote of the electors of all the area municipalities;
 - (b) the mayor of each area municipality;
 - (c) sixteen members of council from the City of Hamilton being the remainder of the council of the City;
 - (d) one member of council from the Town of Dundas elected by general vote of the electors of the said area municipality as a member of the Regional Council and the council of such area municipality;
 - (e) one member of council from the Town of Stoney Creek elected by general vote of the electors of such area municipality as a member of the Regional Council and the council of such area municipality;
 - (f) one member of council from the Town of Ancaster elected by general vote of the electors of such area municipality as a member of the Regional Council and the council of such area municipality;
 - (g) one member of council from the Township of Flamborough elected by general vote of the electors of

such area municipality as a member of the Regional Council and the council of such area municipality;

- (h) the member of the council of the Township of Glanbrook elected by general vote.
- 2. Section 7 of the said Act is repealed.
- 3. Subsection 8 (3) of the said Act is amended by inserting after "than" in the second line "the chairman of the Regional Council or".
- 4. Subsections 11 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Vacancy, chairman

- (1) When a vacancy occurs in the office of the chairman, a successor shall be elected by general vote of the electors of all the area municipalities to hold office for the remainder of the term.
- 5.—(1) Clauses 91 (1) (a) and (b) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 4, are repealed and the following substituted therefor:
 - (a) three members of the Regional Council appointed by resolution of the Regional Council; and
 - (b) two persons appointed by the Lieutenant Governor in Council.
- (2) Subsection 91 (2) of the said Act is amended by striking out "Regional Council" in the second and third lines and inserting in lieu thereof "Lieutenant Governor in Council".

Transition

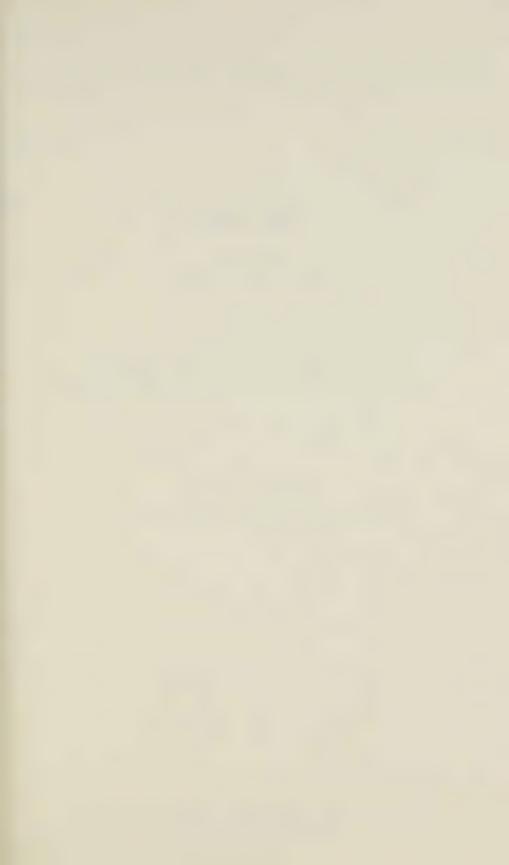
6. Until the term of one of the three members of the Hamilton-Wentworth Regional Board of Commissioners of Police appointed by the Lieutenant Governor in Council before the coming into force of section 5 has expired, all three may continue to be members, but the Regional Council may appoint an additional person to be a member of the board until the number of members appointed by the Lieutenant Governor in Council is reduced to two.

Commencement

- 7.—(1) This Act, except sections 1, 2, 3 and 4, comes into force on the day it receives Royal Assent.
- (2) Sections 1, 2, 3 and 4 come into force on the 22nd day of October, 1986 and have effect for the purposes of the regular election to be held in that year.

8. The short title of this Act is the Regional Municipality of Short title Hamilton-Wentworth Amendment Act, 1986.







ON

56

Bill 40

(Chapter 18 Statutes of Ontario, 1986)

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics



1st Reading May 13th, 1986 2nd Reading May 29th, 1986

3rd Reading May 29th, 1986

Royal Assent June 2nd, 1986



Bill 40 1986

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby Loans up to authorized to raise from time to time by way of loan in any manner provided by the Financial Administration Act such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$1,700,000,000.

\$1,700,000,000

R.S.O. 1980,

(2) The sum of money authorized to be raised by subsec- Idem tion (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the Teachers' Superannuation Act, 1983 and to the Ontario 1983, c. 84 Municipal Employees Retirement Fund under authority of the Ontario Municipal Employees Retirement System Act, but shall R.S.O. 1980, be in addition to all sums of money authorized to be raised by way of loan under any other Act.

2. No money shall be raised by way of loan under subsec- Limitation tion 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made prior to the 30th day of September, 1987.

3. This Act comes into force on the day it receives Royal Commence-Assent.

Short title **4.** The short title of this Act is the Ontario Loan Act, 1986.



35 ELIZABETH II, 1986

420N B B 56

Bill41

An Act to repeal the Ontario Economic Council Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill dissolves the Ontario Economic Council, makes transitional provisions for employees and obligations of the Council and repeals the Act under which the Council was established.

1986 **Bill 41**

An Act to repeal the Ontario Economic Council Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The term for which the chairman or any member of the Term of Ontario Economic Council is appointed expires on the day appointment expires this Act receives Royal Assent.

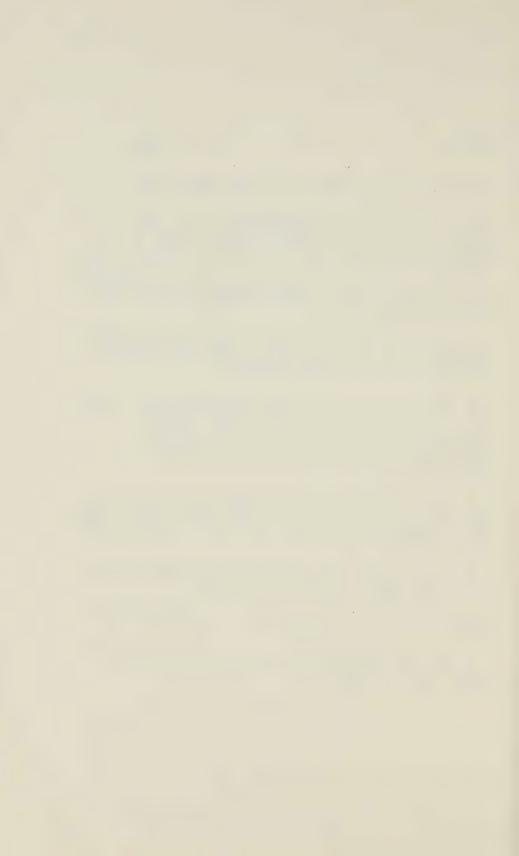
2. The Ontario Economic Council, as continued by the Council Ontario Economic Council Act, being chapter 329 of the Revised Statutes of Ontario, 1980, is dissolved.

3. The Treasurer of Ontario and Minister of Economics Disposition shall assume the financial responsibilities of the Ontario Economic Council under any contract (other than a contract of employment) to which the Ontario Economic Council is a party and that was entered into by all parties thereto prior to the 24th day of October, 1985.

of contracts

4. Officers and employees of the Council who have been Public appointed under the Public Service Act shall, wherever possible assigned ble, be reassigned to other duties in the public service that R.S.O. 1980, provide equivalent remuneration.

- 5. The Ontario Economic Council Act, being chapter 329 Repeal of the Revised Statutes of Ontario, 1980, is repealed.
- 6. This Act comes into force on the day it receives Royal Commence-Assent.
- 7. The short title of this Act is the Ontario Economic Short title Council Repeal Act, 1986.



35 ELIZABETH II, 1986

20N

5.6

Bill 42

An Act to regulate the Activities of Paralegal Agents

Mr. O'Connor



1st Reading

May 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill regulates the activities of paralegal agents who represent clients in Small Claims Court, Provincial Offences Court and other prescribed courts and tribunals. It establishes the Paralegal Agents Committee to make regulations with respect to the standards of admission and qualifications for paralegal agents. The Bill also provides for the disciplining of paralegal agents by the Law Society of Upper Canada.

Bill 42 1986

An Act to regulate the Activities of Paralegal Agents

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

"bencher" and "Convocation" have the same meaning as under the Law Society Act;

R.S.O. 1980,

- "Committee" means the Paralegal Agents Committee established under section 2:
- "paralegal agent" means a person, other than a member or a student member of the Law Society of Upper Canada or a person who acts under the supervision of a lawyer, who acts or holds himself or herself out as acting, on behalf of another person for a fee, in a proceeding in a court of law or before a tribunal or other adjudicator in which that person's rights or liabilities are determined;
- "prescribed" means prescribed by the regulations made under this Act.
- 2.—(1) A committee of the Law Society of Upper Canada Establish to be known as the Paralegal Agents Committee is hereby Paralegal established.

Agents Committee

(2) The Committee shall be composed of,

Composition

- (a) persons representing paralegal appointed by the Lieutenant Governor in Council;
- (b) two benchers, appointed by Convocation; and
- two lay members, one of whom shall be the nominee of the Minister of Colleges and Universities, appointed by the Lieutenant Governor in Council.

Transition

- (3) Clause (2) (a) is repealed two years after it comes into force and the following substituted therefor:
 - (a) five paralegal agents registered under this Act, elected by registered paralegal agents.

Secretary, Assistant Secretary (4) The Committee shall appoint one member from among the members appointed or elected under clause (2) (a) as Secretary and one member as Assistant Secretary.

Term of office

(5) The members of the Committee shall hold office for a term of two years.

Vacancies

(6) If a vacancy occurs in the membership of the Committee, it shall be filled for the unexpired portion of the term.

Quorum

(7) Five members of the Committee, including three persons appointed or elected under clause (2) (a), one bencher and one lay member, constitutes a quorum.

Regulations

- **3.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Committee may make regulations,
 - (a) providing procedures for the election of the members of the Committee who are to be elected by registered paralegal agents;
 - (b) for the examination and admission of paralegal agents to practise in Ontario and for the registration of persons so admitted, for the issuing of certificates of registration and prescribing the fees to be paid on examination and registration;
 - (c) prescribing the qualifications of paralegal agents and the proofs to be furnished as to education, good character and experience;
 - (d) subject to subsection (3), providing for approval of schools, colleges and courses of study, and prescribing educational standards and hours of training;
 - (e) for maintaining a register of persons admitted to practise and providing for the annual renewal of registration and prescribing the fee therefor;
 - (f) authorizing and providing for the preparation, publication and distribution of a code of conduct and ethics for paralegal agents;

- (g) for allowing the use of any title that in the opinion of the Committee will correctly describe a paralegal agent's qualification or occupation and prescribing such titles:
- (h) respecting the conditions and prescribing the minimum amounts of professional liability insurance to be maintained by registered paralegal agents, requiring the provision of proof of the insurance coverage, and respecting the form of the proof and the times when it shall be provided;
- (i) prescribing courts and tribunals in which paralegal agents may act and prescribing matters in respect of which they may act;
- (j) prescribing forms and providing for their use.
- (2) If the regulations mentioned in clauses (1) (a) to (h), Idem both inclusive, have not been filed within 180 days after the day on which this Act comes into force, the Committee shall cause a report to be laid before the Assembly explaining the reason for the delay.

- (3) A regulation mentioned in clause (1) (d) shall be made Idem in consultation with the Minister of Colleges and Universities.
- **4.** An applicant for registration as a paralegal agent shall Good be of good character.

character

5. No person, other than a registered paralegal agent Unauthorized whose registration has not been cancelled or suspended, shall practise as a paralegal agent or hold himself or herself out as being qualified to practise as a paralegal agent.

6. Every paralegal agent shall, as a condition of registration, obtain and maintain professional liability insurance in the prescribed amount.

Mandatory

7.—(1) The Law Society of Upper Canada is responsible Discipline for investigating any complaint that a registered paralegal agent is guilty of misconduct or has displayed such incompetence as to render it desirable in the public interest that the paralegal agent's registration be cancelled or suspended.

(2) Subject to subsection (3), section 33 of the Law Society Procedure Act (procedure to be followed before disciplinary action) R.S.O. 1980. applies with necessary modifications with respect to disciplinary action under subsections (4) and (5).

Discipline Commitee

- (3) A committee of Convocation that is investigating the conduct of a registered paralegal agent shall be composed of,
 - (a) a majority of members who are benchers; and
 - (b) a number of registered paralegal agents that is one less than a majority of the members of the committee.

Cancellation, suspension of registration for misconduct (4) If a registered paralegal agent is found guilty of misconduct or of any contravention of this Act or the regulations, or to have been incompetent, Convocation may cancel the paralegal agent's registration or suspend it for a definite period or may by order reprimand him or her or may make such other disposition as it considers proper in the circumstances.

Reprimand in committee for misconduct

(5) If a committee of Convocation finds that a registered paralegal agent is guilty of misconduct which in its opinion does not warrant cancellation or suspension of registration or reprimand in Convocation, the committee may by order reprimand the paralegal agent.

Appeal to Convocation R.S.O. 1980, c. 233 (6) Section 39 of the *Law Society Act* (appeal from order to reprimand in committee) applies with necessary modifications to a registered paralegal agent found guilty under subsection (5).

Costs

(7) Sections 40 and 41 of the *Law Society Act* (expenses and costs of investigations and hearings) apply with necessary modifications in respect of disciplinary action against a registered paralegal agent.

Appeal to Divisional Court (8) Section 44 of the *Law Society Act* (appeal from suspension, etc.) applies with necessary modifications to a registered paralegal agent found guilty under subsection (4).

Rights pending appeal

(9) When an appeal is brought against the cancellation or suspension of a paralegal agent's registration, the cancellation or suspension remains in effect pending the result of the appeal.

Authorized practice

- **8.**—(1) A registered paralegal agent may act in a proceeding,
 - (a) in Provincial Offences Court;
 - (b) in Small Claims Court;
 - (c) in respect of a landlord and tenant matter;

- (d) before a coroner's inquest;
- (e) in respect of an examination or inquiry under the Immigration Act, 1976 (Canada) or before the 1976-77. Immigration Appeal Board established under that Act:

- (f) in a prescribed court or before a prescribed tribunal: and
- (g) in respect of a prescribed matter.
- (2) A registered paralegal agent shall not act in a proceed- Idem ing in a court or before a tribunal or in respect of a matter that is not provided for by this Act or the regulations.

(3) Subject to subsection (1), a registered paralegal agent Incidental may attend to all matters normally associated with the proper administration of a proceeding in which he or she is acting.

9.—(1) Nothing in this Act or the regulations authorizes a Act does not person, not being so expressly authorized under an Act of the practice of Legislature, to practise as a barrister or solicitor or to hold himself or herself out as a barrister or solicitor.

authorize

(2) A registered paralegal agent shall not use a title, affix Description or prefix that would be likely to mislead the public as to his or qualification her qualification or occupation.

or occupation

(3) Before undertaking to act on behalf of a person, a paralegal agent shall advise the person that the paralegal agent,

Notice to

- (a) is not a barrister or solicitor; and
- (b) is prohibited from acting or advising on a matter that is not provided for by this Act or the regulations.
- 10. Every person who contravenes a provision of this Act Offence or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 and on conviction for a subsequent offence within two years after such first conviction is liable to a fine of not more than \$10,000 and to imprisonment for a term of not more than six months, or to both.

11.—(1) In all cases where proof of registration under this Proof of Act is required, the production of a printed or other copy of the register, certified by the Assistant Secretary of the Committee, is, in the absence of evidence to the contrary, suffi-

cient evidence of the persons who are registered paralegal agents without further proof of the signature of the Assistant Secretary or of the fact that the person is the Assistant Secretary.

Evidence of nonregistration

(2) The absence of the name of a person from such copy is, in the absence of evidence to the contrary, evidence that the person is not registered under this Act.

Omission of name from copy

(3) In the case of a person whose name does not appear in such copy, a copy of the entry of the name of the person on the register, certified by the Assistant Secretary, is, in the absence of evidence to the contrary, evidence that such person is registered under this Act.

Commencement **12.**—(1) This Act, except section 5, comes into force on the day it receives Royal Assent.

Idem

(2) Section 5 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

13. The short title of this Act is the *Paralegal Agents Act*, 1986.

35 ELIZABETH II, 1986

A20N B B 56

Bill 43

An Act to amend the Shoreline Property Assistance Act

The Hon. B. Grandmaître Minister of Municipal Affairs



1st Reading

May 26th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

At present, loans may be made under the Act for the construction of protective works and for building repairs. The land to which a loan relates must be located in a municipality and the loan program is administered by municipalities. It is proposed that the Act be amended so that loans can also be made for building raising and building relocation. It is also proposed that the Act be amended so that loans under the Act will be available to land owners in territories without municipal organization.

SECTION 1. The proposed re-enactment of section 1 of the Act contains the definition of "building repairs" now found in section 12. The other changes in this section are complementary to the amendments noted above.

The proposed section 1a will permit building relocation loans to be made where the owner proposes to move the building from one parcel of land to another.

SECTIONS 2 to 6. The amendments change the heading for Part I of the Act and add references to loans for building raising, building relocation and building repairs to Part I. The amendment to section 4 of the Act clarifies that loans may not be made until an inspector has filed an inspection and completion certificate.

SECTION 7. The present Part II will be incorporated into Part I by sections 1 to 6 of this Bill. The proposed Part II relates to loans for the construction of works, building raising, building relocation and building repairs in territories without municipal organization. The program will be administered by the Minister of Municipal Affairs. Section 12 deals with application procedures. Section 13 deals with collection procedures. Section 13a sets out inspection requirements.

SECTION 8. Section 14 of the Act sets out regulation making powers. The amendments are complementary to the purposes of the Bill set out above.

Bill 43 1986

An Act to amend the Shoreline Property Assistance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 1 of the Shoreline Property Assistance Act, being chapter 471 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
 - 1. In this Act,

Definitions

- "building raising" means the raising of a building or structure required by reason of damage or potential damage to the building or structure;
- "building relocation" means the relocation of a building or structure required by reason of damage or potential damage to the building or structure;
- "building repairs" means repairs to a building or structure required by reason of damage to the building or structure;
- "damage" means damage caused by high water levels of or the impact of ice on a lake, river or other body of water or by damage to or erosion of the shore of a lake, river or body of water caused by the elements, and "potential damage" has a corresponding meaning;
- "Minister" means the Minister of Municipal Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned;
- "municipality" means a city, town, village or township;
- "prescribed" means prescribed by the regulations made under this Act;

"works" means retaining walls, dykes, breakwaters, groynes, cribs and other structures designed for the rehabilitation or protection, or both, of property on the shores of lakes, rivers or other bodies of water that have been damaged or eroded by the elements, and includes repairs and improvements to existing works.

Building relocation

- **1a.** A loan for building relocation may be made under this Act notwithstanding that the building or structure is to be relocated on a parcel of land other than the one it was on at the time the application was made for the loan,
 - (a) if at the time of the application and at the time money is advanced under the loan, the applicant is assessed as owner of both parcels;
 - (b) if the declaration required by subsection 3 (3) or clause 12 (3) (a) sets out the particulars referred to in the relevant subsection for both parcels of land,

and,

- (c) the money lent shall be deemed to be lent in respect of the parcel on which the building or structure is situate after the relocation;
- (d) subsection 3 (4) applies with necessary modifications to both parcels of land where the land is in a municipality and clause 12 (3) (b) applies with necessary modifications to both parcels of land where the land is not in a municipality.
- 2. Part I of the said Act is amended by striking out the heading "Rehabilitation and Protection Loans" and inserting in lieu thereof "Loans in Municipalities".
- **3.** Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

Borrowing by municipalities R.S.O. 1980, c. 347

- (1) Subject to sections 64 and 65 of the *Ontario Municipal Board Act*, the council of a municipality may pass by-laws in the prescribed form authorizing,
 - (a) the borrowing of money from the Treasurer of Ontario for the purpose of lending the money for any or all of the construction of works, building raising, building relocation and building repairs; and

(b) the issuing of debentures in the prescribed form by the municipality or by a district, metropolitan or regional municipality on its behalf.

4.—(1) Subsection 3 (1) of the said Act is repealed and the following substituted therefor:

(1) An owner of land who is assessed as the owner thereof Application by owner for a municipality or whose of any time after the return of the in a municipality or, where at any time after the return of the loan assessment roll and before the return of the assessment roll in the following year, the land is conveyed to some other person, such other person may make application to the council of the municipality in the prescribed form to borrow money for the purpose of,

3

- (a) constructing works on the land or, with the prior consent of the Crown, on Crown land immediately adjacent to the land; or
- (b) building raising, building relocation or building repairs on the land.
- (2) Subsection 3 (8) of the said Act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 471, section 16, is repealed and the following substituted therefor:
- (8) A loan under this Part shall not exceed the amount Limitation prescribed.

(9) A municipality shall not lend money for building relocation unless, following the relocation, the building or structure is in the same municipality as it was in at the time of the applisame cation for the loan.

Building relocation must be in municipality

5. Section 4 of the said Act is repealed and the following substituted therefor:

4.—(1) The council of a municipality borrowing money Appointment under this Part shall have a competent inspector assess the inspector need for the work, the type of work proposed and the compatability of the work with adjacent property.

(2) The inspector shall inspect the work and shall file with Idem the clerk of the municipality an inspection and completion certificate in the prescribed form and no money shall be advanced by the municipality under the loan until the certificate has been filed.

(3) The costs of the services of the inspector shall be Payment for charged against the work inspected and shall be paid out of inspector's services

the amount borrowed and deducted from the amount loaned under section 7.

6. Section 11 of the said Act is repealed and the following substituted therefor:

Discharge of indebtedness by owner

- 11. The owner of land in respect of which money has been borrowed under this Part may obtain a discharge of the indebtedness at any time by paying to the treasurer of the municipality the outstanding balance of the loan together with accrued interest.
- 7. Part II of the said Act, as amended by the Revised Statutes of Ontario, 1980, chapter 471, section 20, is repealed and the following substituted therefor:

PART II

LOANS IN TERRITORY WITHOUT MUNICIPAL ORGANIZATION

Application by owner for loan

- **12.**—(1) An owner of land in territory without municipal organization who is assessed as the owner thereof may make application to the Minister in the prescribed form to borrow money for the purpose of,
 - (a) constructing works on the land or, with the prior consent of the Crown, on Crown land immediately adjacent to the land; or
 - (b) building raising, building relocation or building repairs on the land.

Where works on Crown

(2) Where the money is borrowed to construct works on Crown lands, it shall be deemed to be borrowed in respect of the land of the owner who borrowed the money.

Statutory declaration of applicant

- (3) The application shall not be acted upon unless it is accompanied by,
 - (a) a declaration of the applicant stating that the applicant is the actual owner of the land mentioned in the application, and that the land is free from encumbrance, or if the land or any part of it is mortgaged or otherwise encumbered, stating the name and address of the mortgagee or other encumbrancer and where it has been assigned, the name and address of the assignee of the mortgage or other encumbrance; and

- (b) where there is a mortgage or other encumbrance. the written consent to the loan of each such mortgagee or other encumbrancer and assignee of the mortgage or encumbrance.
- (4) The Minister is not required to hold a hearing before Hearing deciding on an application.

not required

5

(5) The approval of an application under subsection (1) is in the discretion of the Minister whose decision is final and written notice of the decision shall forthwith be given to the applicant and all mortgagees and other encumbrancers and assignees referred to in subsection (3).

Discretion of Minister

(6) A loan under this Part shall not exceed the amount Limitation prescribed.

(7) The Minister shall lend the money borrowed under the authority of this Part in sums of \$100 or multiples thereof for a term of ten years to be repaid in equal annual payments at a rate of interest prescribed by the regulations.

Loans by Minister

(8) No money shall be advanced under a loan under this Note Part unless the owner has delivered a signed note for the amount of the loan

required

- **13.**—(1) In the event of any default in the repayment of a Default loan made under this Part.
 - (a) interest on the amount due shall accrue during the time of such default at the rate prescribed from time to time: and
 - (b) in addition to any other remedy for the recovery thereof, should the default continue for a period of one year, the outstanding balance of the loan together with accrued interest and costs shall thereupon become due and payable.
- (2) The amount lent under this Part is a debt due Her Debt owing Majesty in right of Ontario from the owner of the land and any subsequent owner of the land and the outstanding balance of the loan, together with interest due and costs, may be recovered by an action in any court of competent jurisdiction against the owner or any subsequent owner.

Her Majesty

(3) Her Majesty in right of Ontario has a special lien for Special lien the outstanding balance of a loan made under this Part, together with interest and costs, against the land in respect of

which the loan was made and against the buildings and structures on the land.

Priority

- (4) The special lien conferred by subsection (3) has priority over,
 - (a) every mortgage and other encumbrance in respect of which a consent to the loan was given; and
 - (b) every mortgage and other encumbrance or claim that was created or that arose before the lien arose, if the mortgage, other encumbrance or claim was not registered in the proper land registry office against the title to the land at the time the lien arose.

Idem

(5) The Minister may register a notice of the special lien conferred by subsection (3) in the proper land registry office against the title of the land, and, upon registration of the notice, the special lien has, in addition to the priority given by subsection (4), priority over every mortgage or other encumbrance or claim registered in the proper land registry office against the title to the land after registration of the notice.

Additional remedies

- (6) In addition to any other remedies, where there has been default in repayment of a loan made under this Part,
 - (a) the amount of the loan due and unpaid, together with interest and costs, may be deducted from any money payable by the Province of Ontario to the person who is in default; and
 - (b) if the land or any part of it is occupied by a tenant, the Minister may give notice in writing to the tenant requiring the tenant to pay to the Treasurer of Ontario the rent payable by the tenant as it becomes due to the amount of the loan due and unpaid, together with interest and costs.

Apportionment on subdivision of land (7) Where a part of a parcel of land in respect of which money has been lent under this Part is sold, the Minister may apportion the amount owing, including interest and costs between the part sold and the part remaining, having regard to the effect of the works, building raising, building relocation or building repair on each part into which the parcel of land is divided and such other matters as the Minister considers appropriate, and the decision of the Minister with respect to the apportionment is final.

(8) The owner of land in respect of which money has been Discharge borrowed under this Part may obtain a discharge of the indebtedness at any time by paying to the Treasurer of Ontario the outstanding balance of the loan together with accrued interest and costs

SHORELINE PROPERTY ASSISTANCE

(9) Upon the repayment in full of a loan made under this Idem Part, the Minister shall cause to be registered in the proper land registry office against the title of the land a certificate discharging the special lien conferred by subsection (3).

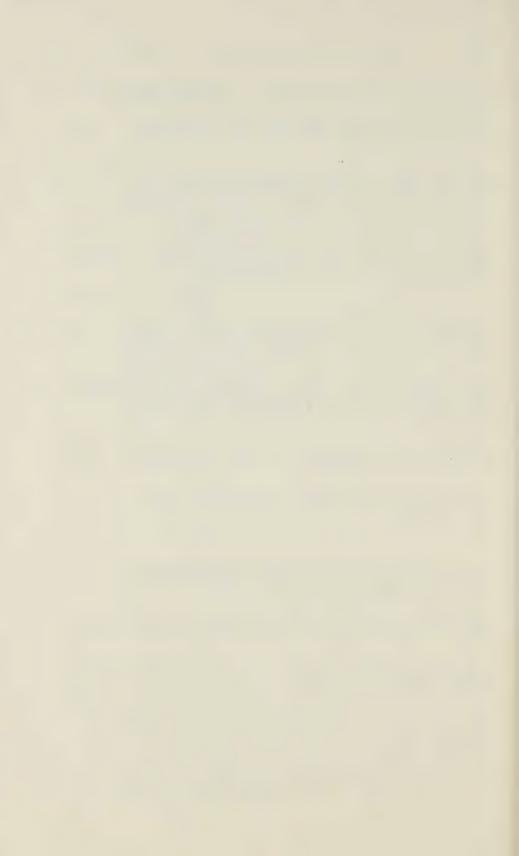
13a.—(1) The Minister shall have a competent inspector Appointment assess the need for the work, the type of work proposed and of inspector the compatability of the work with adjacent property.

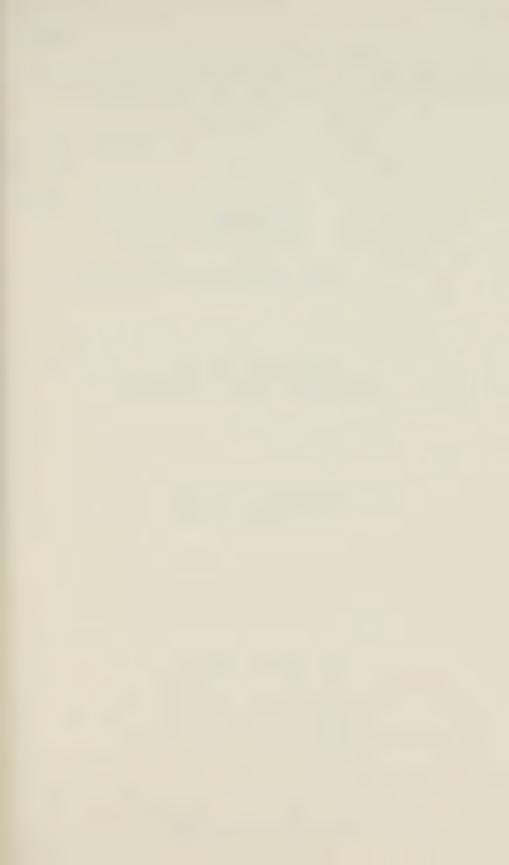
(2) The inspector shall inspect the work and shall file with Idem the Minister an inspection and completion certificate in the prescribed form and no money shall be advanced under the loan until the certificate has been filed.

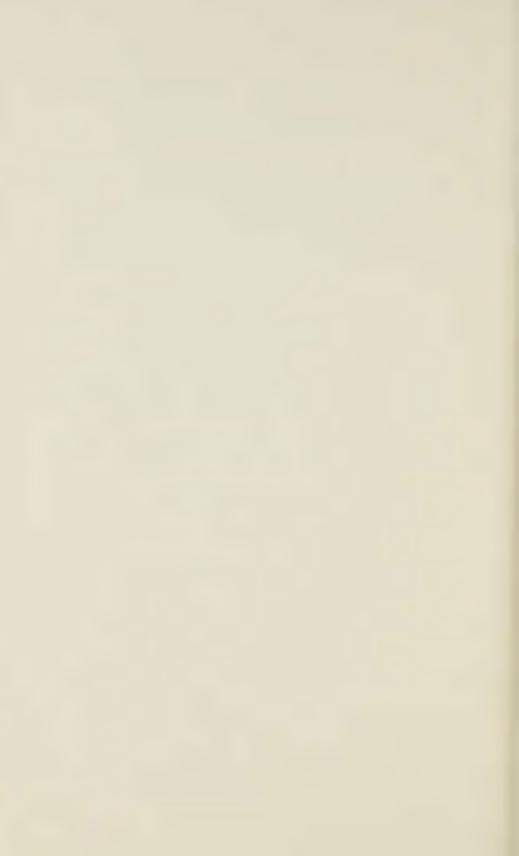
(3) The costs of the services of the inspector may be Payment for charged against the work inspected and may be paid out of services services the amount borrowed and deducted from the amount loaned under section 12.

- 8. Clauses 14 (b) and (d) of the said Act are repealed and the following substituted therefor:
 - (b) prescribing the maximum amount of loans that may be made under this Act:

- (d) determining the rate of interest for the purposes of subsection 5 (4), subsection 9 (2), subsection 12 (7) and subsection 13 (1).
- 9. This Act comes into force on the day it receives Royal Commence-Assent.
- 10. The short title of this Act is the Shoreline Property Short title Assistance Amendment Act, 1986.







Publ

CA20N XB -B56

Bill43

(Chapter 22 Statutes of Ontario, 1986)

An Act to amend the Shoreline Property Assistance Act

The Hon. B. Grandmaître Minister of Municipal Affairs

1st Reading

May 26th, 1986

2nd Reading

June 25th, 1986

3rd Reading

July 3rd, 1986

Royal Assent

July 7th, 1986





Bill 43 1986

An Act to amend the Shoreline Property Assistance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the Shoreline Property Assistance Act, being chapter 471 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1. In this Act.

Definitions

- "building raising" means the raising of a building or structure required by reason of damage or potential damage to the building or structure;
- "building relocation" means the relocation of a building or structure required by reason of damage or potential damage to the building or structure;
- "building repairs" means repairs to a building or structure required by reason of damage to the building or structure;
- "damage" means damage caused by high water levels of or the impact of ice on a lake, river or other body of water or by damage to or erosion of the shore of a lake, river or body of water caused by the elements, and "potential damage" has a corresponding meaning;
- "Minister" means the Minister of Municipal Affairs or such other member of the Executive Council to whom the administration of this Act may be assigned;
- "municipality" means a city, town, village or township;
- "prescribed" means prescribed by the regulations made under this Act;

"works" means retaining walls, dykes, breakwaters, groynes, cribs and other structures designed for the rehabilitation or protection, or both, of property on the shores of lakes, rivers or other bodies of water that have been damaged or eroded by the elements, and includes repairs and improvements to existing works.

Building relocation

- **1a.** A loan for building relocation may be made under this Act notwithstanding that the building or structure is to be relocated on a parcel of land other than the one it was on at the time the application was made for the loan,
 - (a) if at the time of the application and at the time money is advanced under the loan, the applicant is assessed as owner of both parcels;
 - (b) if the declaration required by subsection 3 (3) or clause 12 (3) (a) sets out the particulars referred to in the relevant subsection for both parcels of land,

and,

- (c) the money lent shall be deemed to be lent in respect of the parcel on which the building or structure is situate after the relocation;
- (d) subsection 3 (4) applies with necessary modifications to both parcels of land where the land is in a municipality and clause 12 (3) (b) applies with necessary modifications to both parcels of land where the land is not in a municipality.
- 2. Part I of the said Act is amended by striking out the heading "Rehabilitation and Protection Loans" and inserting in lieu thereof "Loans in Municipalities".
- **3.** Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

Borrowing by municipalities R.S.O. 1980, c. 347

- (1) Subject to sections 64 and 65 of the *Ontario Municipal Board Act*, the council of a municipality may pass by-laws in the prescribed form authorizing,
 - (a) the borrowing of money from the Treasurer of Ontario for the purpose of lending the money for any or all of the construction of works, building raising, building relocation and building repairs; and

(b) the issuing of debentures in the prescribed form by the municipality or by a district, metropolitan or regional municipality on its behalf.

4.—(1) Subsection 3 (1) of the said Act is repealed and the following substituted therefor:

(1) An owner of land who is assessed as the owner thereof Application by owner for in a municipality or, where at any time after the return of the loan assessment roll and before the return of the assessment roll in the following year, the land is conveyed to some other person, such other person may make application to the council of the municipality in the prescribed form to borrow money for the purpose of,

- (a) constructing works on the land or, with the prior consent of the Crown, on Crown land immediately adjacent to the land; or
- (b) building raising, building relocation or building repairs on the land.
- (2) Subsection 3 (8) of the said Act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 471, section 16, is repealed and the following substituted therefor:
- (8) A loan under this Part shall not exceed the amount Limitation prescribed.

(9) A municipality shall not lend money for building relocation unless, following the relocation, the building or structure must be in is in the same municipality as it was in at the time of the appli-same cation for the loan.

Building relocation municipality

5. Section 4 of the said Act is repealed and the following substituted therefor:

4.—(1) The council of a municipality borrowing money Appointment and duties of under this Part shall have a competent inspector assess the inspector need for the work, the type of work proposed and the compatability of the work with adjacent property.

(2) The inspector shall inspect the work and shall file with Idem the clerk of the municipality an inspection and completion certificate in the prescribed form and no money shall be advanced by the municipality under the loan until the certificate has been filed.

(3) The costs of the services of the inspector shall be Payment for charged against the work inspected and shall be paid out of services

the amount borrowed and deducted from the amount loaned under section 7.

6. Section 11 of the said Act is repealed and the following substituted therefor:

Discharge of indebtedness by owner

- 11. The owner of land in respect of which money has been borrowed under this Part may obtain a discharge of the indebtedness at any time by paying to the treasurer of the municipality the outstanding balance of the loan together with accrued interest.
- 7. Part II of the said Act, as amended by the Revised Statutes of Ontario, 1980, chapter 471, section 20, is repealed and the following substituted therefor:

PART II

LOANS IN TERRITORY WITHOUT MUNICIPAL ORGANIZATION

Application by owner for loan

- **12.**—(1) An owner of land in territory without municipal organization who is assessed as the owner thereof may make application to the Minister in the prescribed form to borrow money for the purpose of,
 - (a) constructing works on the land or, with the prior consent of the Crown, on Crown land immediately adjacent to the land; or
 - (b) building raising, building relocation or building repairs on the land.

Where works on Crown land (2) Where the money is borrowed to construct works on Crown lands, it shall be deemed to be borrowed in respect of the land of the owner who borrowed the money.

Statutory declaration of applicant

- (3) The application shall not be acted upon unless it is accompanied by,
 - (a) a declaration of the applicant stating that the applicant is the actual owner of the land mentioned in the application, and that the land is free from encumbrance, or if the land or any part of it is mortgaged or otherwise encumbered, stating the name and address of the mortgagee or other encumbrancer and where it has been assigned, the name and address of the assignee of the mortgage or other encumbrance; and

- (b) where there is a mortgage or other encumbrance, the written consent to the loan of each such mortgagee or other encumbrancer and assignee of the mortgage or encumbrance.
- (4) The Minister is not required to hold a hearing before Hearing not required deciding on an application.

5

(5) The approval of an application under subsection (1) is in the discretion of the Minister whose decision is final and written notice of the decision shall forthwith be given to the applicant and all mortgagees and other encumbrancers and assignees referred to in subsection (3).

Discretion of Minister

(6) A loan under this Part shall not exceed the amount Limitation prescribed.

on loans

(7) The Minister shall lend the money borrowed under the authority of this Part in sums of \$100 or multiples thereof for a term of ten years to be repaid in equal annual payments at a rate of interest prescribed by the regulations.

Loans by Minister

(8) No money shall be advanced under a loan under this Note Part unless the owner has delivered a signed note for the amount of the loan.

required

- 13.—(1) In the event of any default in the repayment of a Default loan made under this Part.
 - (a) interest on the amount due shall accrue during the time of such default at the rate prescribed from time to time; and
 - (b) in addition to any other remedy for the recovery thereof, should the default continue for a period of one year, the outstanding balance of the loan together with accrued interest and costs shall thereupon become due and payable.
- (2) The amount lent under this Part is a debt due Her Debt owing Majesty in right of Ontario from the owner of the land and any subsequent owner of the land and the outstanding balance of the loan, together with interest due and costs, may be recovered by an action in any court of competent jurisdiction against the owner or any subsequent owner.

Her Majesty

(3) Her Majesty in right of Ontario has a special lien for Special lien the outstanding balance of a loan made under this Part, together with interest and costs, against the land in respect of

which the loan was made and against the buildings and structures on the land.

Priority

- (4) The special lien conferred by subsection (3) has priority over,
 - (a) every mortgage and other encumbrance in respect of which a consent to the loan was given; and
 - (b) every mortgage and other encumbrance or claim that was created or that arose before the lien arose, if the mortgage, other encumbrance or claim was not registered in the proper land registry office against the title to the land at the time the lien arose.

Idem

(5) The Minister may register a notice of the special lien conferred by subsection (3) in the proper land registry office against the title of the land, and, upon registration of the notice, the special lien has, in addition to the priority given by subsection (4), priority over every mortgage or other encumbrance or claim registered in the proper land registry office against the title to the land after registration of the notice.

Additional remedies

- (6) In addition to any other remedies, where there has been default in repayment of a loan made under this Part,
 - (a) the amount of the loan due and unpaid, together with interest and costs, may be deducted from any money payable by the Province of Ontario to the person who is in default; and
 - (b) if the land or any part of it is occupied by a tenant, the Minister may give notice in writing to the tenant requiring the tenant to pay to the Treasurer of Ontario the rent payable by the tenant as it becomes due to the amount of the loan due and unpaid, together with interest and costs.

Apportionment on subdivision of land (7) Where a part of a parcel of land in respect of which money has been lent under this Part is sold, the Minister may apportion the amount owing, including interest and costs between the part sold and the part remaining, having regard to the effect of the works, building raising, building relocation or building repair on each part into which the parcel of land is divided and such other matters as the Minister considers appropriate, and the decision of the Minister with respect to the apportionment is final.

(8) The owner of land in respect of which money has been Discharge borrowed under this Part may obtain a discharge of the indebtedness at any time by paying to the Treasurer of Ontario the outstanding balance of the loan together with accrued interest and costs.

(9) Upon the repayment in full of a loan made under this Idem Part, the Minister shall cause to be registered in the proper land registry office against the title of the land a certificate discharging the special lien conferred by subsection (3).

13a.—(1) The Minister shall have a competent inspector Appointment assess the need for the work, the type of work proposed and of inspector the compatability of the work with adjacent property.

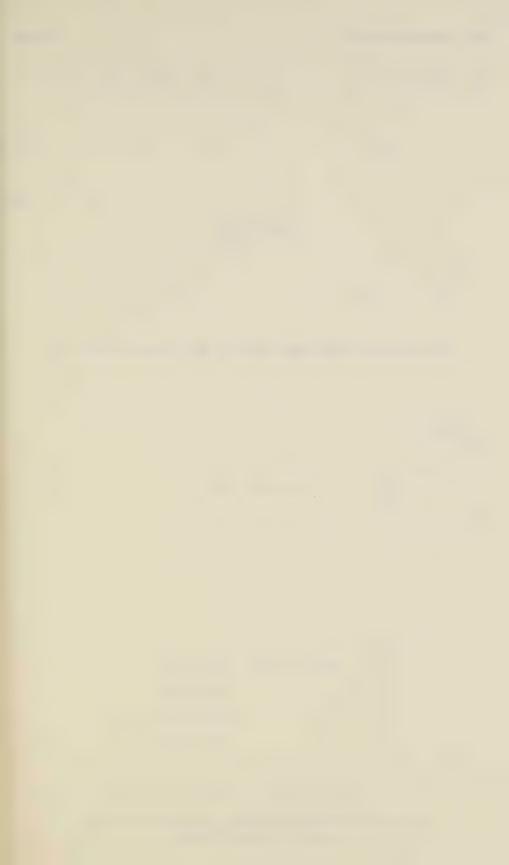
(2) The inspector shall inspect the work and shall file with Idem the Minister an inspection and completion certificate in the prescribed form and no money shall be advanced under the loan until the certificate has been filed.

(3) The costs of the services of the inspector may be Payment for charged against the work inspected and may be paid out of services the amount borrowed and deducted from the amount loaned under section 12.

- 8. Clauses 14 (b) and (d) of the said Act are repealed and the following substituted therefor:
 - (b) prescribing the maximum amount of loans that may be made under this Act:

- (d) determining the rate of interest for the purposes of subsection 5 (4), subsection 9 (2), subsection 12 (7) and subsection 13 (1).
- 9. This Act comes into force on the day it receives Royal Commence-Assent.
- 10. The short title of this Act is the Shoreline Property Short title Assistance Amendment Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill 44

An Act to amend the Environmental Protection Act

Mr. Wildman



1st Reading
2nd Reading

May 26th, 1986

3rd Reading

Royal Assent

EXPLANATORY NOTE

This Bill would provide regulation of motor vehicle salvage and disposal sites located in territories without municipal organization under the *Environmental Protection Act*. At the present time, the *Municipal Act* empowers municipalities to make by-laws regulating these sites, but there is no parallel regulation for territories without municipal organization.

Bill 44 1986

An Act to amend the Environmental Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Part V of the Environmental Protection Act, being chapter 141 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 49, sections 1 and 2, is further amended by adding thereto the following section:
- **24a.**—(1) In this section, "motor vehicle salvage and dis-Interpretation posal site" means a waste disposal site that is used for storing motor vehicles for the purpose of wrecking or dismantling them or salvaging parts of them for sale or other disposal.

(2) The following standards are required for the location, maintenance and operation of a motor vehicle salvage and disposal site located in a territory without municipal organiza- disposal site tion:

- 1. Access roads and on-site roads shall be provided so that vehicles hauling waste to, on and from the site may travel readily on any day under all normal weather conditions.
- Access to the site shall be limited to such times as 2. an attendant is on duty.
- The site shall not be located on land covered by 3. water or subject to flooding and shall be so located that no direct drainage leads to a watercourse.
- The site shall be located to reduce to a minimum 4. inconvenience due to dust, noise and traffic.
- 5. Signs shall be posted at the entrance stating the times during which the site is open and any other conditions with respect to the use of the site.

- 6. The site shall be located and operated to reduce to a minimum the hazards to health or safety of persons or property including hazards from fire and vermin.
- 7. No open burning shall be permitted.
- 8. All operations at the site shall be conducted in an orderly fashion under adequate and continual supervision.
- 9. That part of the property that is being used as a motor vehicle salvage and disposal site shall be enclosed to prevent entry by unauthorized persons and access to the property shall be by roadway closed by a gate capable of being locked.
- 10. The site shall be screened from the public's view.
- 11. Scavenging shall not be permitted.
- 12. All fluids must be drained from motor vehicles before they are processed and any fluids or other materials disposed of in a manner approved by the Minister if they are not stored for purposes of resale.

Application

(3) The standards set out in subsection (2) take the place of any standards prescribed in the regulations which might otherwise govern the location, maintenance and operation of a motor vehicle salvage and disposal site located in a territory without municipal organization.

Idem

(4) Subject to subsection (3), nothing in the regulations has the effect of exempting a motor vehicle salvage and disposal site located in a territory without municipal organization from this Act or the regulations.

Commencement 2. This Act comes into force on the day it receives Royal Assent.

Short title

3. Short title of this Act is the Environmental Protection Amendment Act, 1986.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill45

An Act to amend the Labour Relations Act

Mr. Barlow



1st Reading

May 27th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. This section would require a secret ballot vote for certification of a trade union in all cases where the Board is satisfied that at least 45 per cent of the employees in the bargaining unit are members of a trade union. The Act now does not require a secret ballot and provides that the Board has discretion to decide whether or not to call a vote where it is satisfied that more than 55 per cent of the employees are members of the union.

SECTION 2. Subsection 72 (4) now reads as follows:

(4) A strike vote or a vote to ratify a proposed collective agreement taken by a trade union shall be by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed.

1986 **Bill 45**

An Act to amend the Labour Relations Act

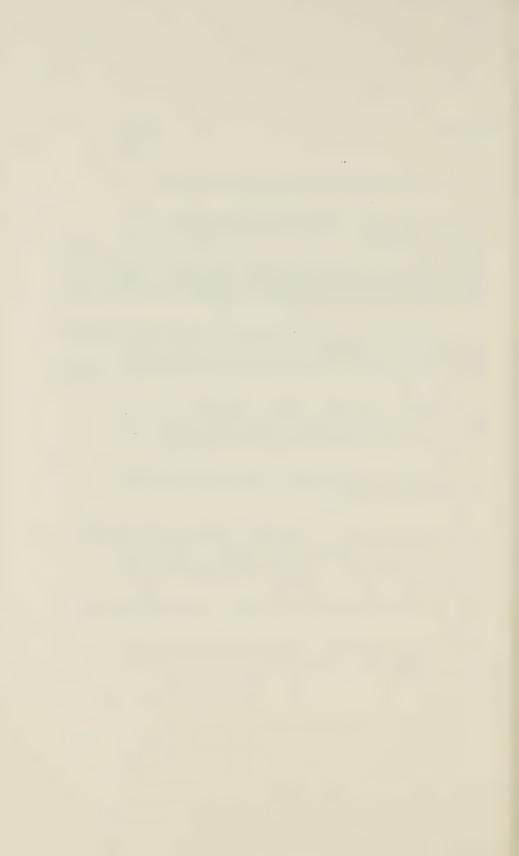
HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 7 (2) of the Labour Relations Act, being chapter 228 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- (2) If the Board is satisfied that not less than 45 per cent of Representhe employees in the bargaining unit are members of the trade union, the Board shall direct that a representation vote be taken by secret ballot.

tation vote

- (2) Subsection 7 (3) of the said Act is amended by striking out "and in other cases, if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union" in the third, fourth and fifth lines.
- 2. Subsection 72 (4) of the said Act is repealed and the following substituted therefor:
- (4) A trade union shall not call a strike or ratify a proposed Strike or collective agreement unless it has called a strike vote or a vote vote to ratify the proposed collective agreement, that vote has been held by secret ballot and a majority of those voting have supported the call to strike or the proposed collective agreement.

- 3. This Act comes into force on the day it receives Royal Commence-Assent.
- 4. The short title of this Act is the Labour Relations Amend- Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO 35 ELIZABETH II, 1986

Bill 46

An Act to amend the Ontario Institute for Studies in Education Act

Mr. Pouliot



1st Reading May 28th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to give the Ontario Institute for Studies in Education the power to grant degrees, including honorary degrees, diplomas and certificates in education.

Bill 46 1986

An Act to amend the Ontario Institute for Studies in Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 5 of the *Ontario Institute for Studies in Education Act*, being chapter 341 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:
 - (ea) provide for the granting of and grant degrees, including honorary degrees, diplomas and certificates in education.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Ontario Institute for Short title Studies in Education Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 47

An Act proclaiming Arbour Day

Mr. Laughren



1st Reading

May 29th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

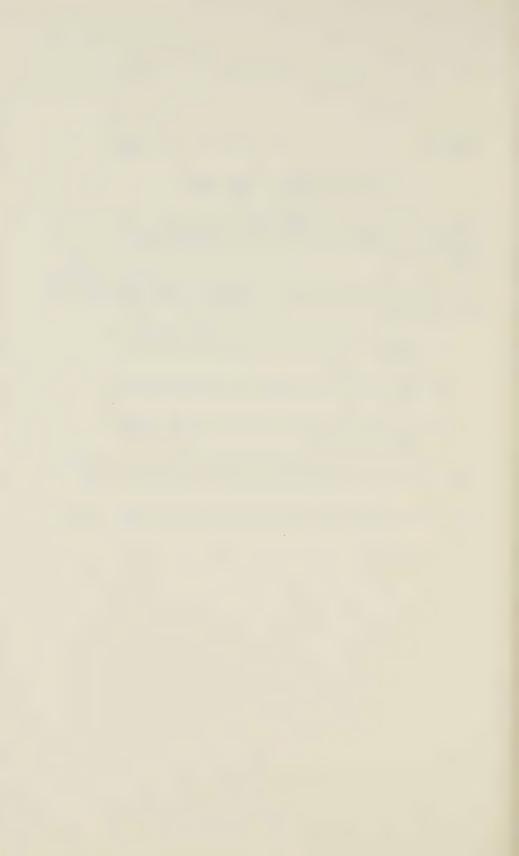
The Bill would require each local municipality to designate a day in May as Arbour Day.

Bill 47 1986

An Act proclaiming Arbour Day

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** Every local municipality, as defined in the *Municipal Arbour Day Act*, shall designate a day in May to be known as Arbour Day R.S.O. 1980, for the purpose of,
 - (a) educating the public as to the value of trees and forests;
 - (b) encouraging the management and replenishment of forests; and
 - (c) encouraging the planting of trees for the beautification of Ontario.
- **2.** This Act comes into force on the day it receives Royal Commencement Assent.
 - 3. The short title of this Act is the Arbour Day Act, 1986. Short title



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 48

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. B. Grandmaître Minister of Municipal Affairs



1st Reading June 2nd, 1986
2nd Reading

3rd Reading Royal Assent

EXPLANATORY NOTE

The proposed section 24a authorizes the Metropolitan Council and the councils of the area municipalities to establish supplementary pensions for council members and their surviving spouses and children.

1986 **Bill 48**

An Act to amend the Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Part I of the Municipality of Metropolitan Toronto Act, being chapter 314 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 24a.—(1) The Metropolitan Council and the council of Suppleeach area municipality may pass by-laws for providing pensions for members of the Metropolitan Council or the council of the area municipality, as the case may be, and their surviving spouses and children in respect of both current and prior service on council in an amount not exceeding 1.5 per cent of pensionable earnings multiplied by the total number of years and part of a year of credited service up to a maximum of 70 per cent of pensionable earnings when combined with any pension payable under the Ontario Municipal Employees Retirement System Act.

R.S.O. 1980,

(2) In subsection (1), "credited service" and "pensionable Definitions earnings" have the same meaning as in Regulation 724 of Revised Regulations of Ontario, 1980 made under the Ontario Municipal Employees Retirement System Act.

(3) A by-law passed under subsection (1) may provide that Prior a member of council shall contribute up to 50 per cent of any payments required in respect of benefits for prior service on council and that such payments may be on a deferred basis.

(4) A by-law passed under subsection (1) may be amended Amendments to vary the amounts of the pensions under that subsection or the payments required by subsection (3).

to by-law

(5) No by-law under subsection (1) and no by-law amend- Two-thirds ing such a by-law shall be passed except on an affirmative vote

vote required

of at least two-thirds of the council present and voting thereon.

Administration (6) The Metropolitan Corporation or the area municipality, as the case may be, and the Ontario Municipal Employees Retirement Board or any other qualified person may enter into agreements to administer pensions provided under this section.

Idem

(7) The Metropolitan Corporation and any area municipality may enter into agreements to administer pensions provided under this section and such agreement may authorize the Metropolitan Corporation or the area municipality, as the case may be, to enter an agreement under subsection (6) with respect to pensions administered under an agreement made under this subsection.

Deductions

(8) The Metropolitan Corporation or the area municipality, as the case may be, shall deduct by instalments from the remuneration of a member of council the amount that the member is required to pay under the terms of a pension plan established under this section.

Non-application R.S.O. 1980,

(9) Sections 64 and 65 of the *Ontario Municipal Board Act* do not apply so as to require Municipal Board approval with respect to pensions provided under this section.

Transition

(10) A pension may be provided under this section to a person who was a member of council on the 30th day of November, 1985, notwithstanding that the person is not a member of council on the day the by-law establishing the pension plan is passed and the pension may be paid retroactive to the 1st day of December, 1985.

Commencement 2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the Municipality of Metropolitan Toronto Amendment Act, 1986.

Bill 48

(Chapter 55 Statutes of Ontario, 1986)

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. B. Grandmaître Minister of Municipal Affairs



1st Reading June 2nd, 1986

2nd Reading November 18th, 1986

3rd Reading November 27th, 1986

Royal Assent November 27th, 1986



Bill 48 1986

An Act to amend the **Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Part I of the Municipality of Metropolitan Toronto Act, being chapter 314 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- **24a.**—(1) The Metropolitan Council and the council of Suppleeach area municipality may pass by-laws for providing pensions for members of the Metropolitan Council or the council of the area municipality, as the case may be, and their surviving spouses and children in respect of both current and prior service on council in an amount not exceeding 1.5 per cent of pensionable earnings multiplied by the total number of years and part of a year of credited service up to a maximum of 70 per cent of pensionable earnings when combined with any pension payable under the Ontario Municipal Employees R.S.O. 1980, Retirement System Act.

mentary pensions, members of council

(2) In subsection (1), "credited service" and "pensionable Definitions earnings" have the same meaning as in Regulation 724 of Revised Regulations of Ontario, 1980 made under the Ontario Municipal Employees Retirement System Act.

(3) A by-law passed under subsection (1) may provide that Prior a member of council shall contribute up to 50 per cent of any payments required in respect of benefits for prior service on council and that such payments may be on a deferred basis.

(4) A by-law passed under subsection (1) may be amended to vary the amounts of the pensions under that subsection or the payments required by subsection (3).

Amendments to by-law

(5) No by-law under subsection (1) and no by-law amending such a by-law shall be passed except on an affirmative vote

Two-thirds vote required of at least two-thirds of the council present and voting thereon.

Administration (6) The Metropolitan Corporation or the area municipality, as the case may be, and the Ontario Municipal Employees Retirement Board or any other qualified person may enter into agreements to administer pensions provided under this section.

Idem

(7) The Metropolitan Corporation and any area municipality may enter into agreements to administer pensions provided under this section and such agreement may authorize the Metropolitan Corporation or the area municipality, as the case may be, to enter an agreement under subsection (6) with respect to pensions administered under an agreement made under this subsection.

Deductions

(8) The Metropolitan Corporation or the area municipality, as the case may be, shall deduct by instalments from the remuneration of a member of council the amount that the member is required to pay under the terms of a pension plan established under this section.

Non-application R.S.O. 1980, c. 347 (9) Sections 64 and 65 of the *Ontario Municipal Board Act* do not apply so as to require Municipal Board approval with respect to pensions provided under this section.

Transition

(10) A pension may be provided under this section to a person who was a member of council on the 30th day of November, 1985, notwithstanding that the person is not a member of council on the day the by-law establishing the pension plan is passed and the pension may be paid retroactive to the 1st day of December, 1985.

Commencement 2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the Municipality of Metropolitan Toronto Amendment Act, 1986.

MN

Publics

Bill 49

Private Member's Bill

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 49

An Act to amend the Landlord and Tenant Act

Mr. Shymko



1st Reading June 3rd, 1986 2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to exempt an agreement from Part IV of the Act whereby a landlord waives a right in favour of the tenant.

Bill 49 1986

An Act to amend the Landlord and Tenant Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 82 of the Landlord and Tenant Act, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:
- (3) This Part does not apply to an agreement between a Exemption landlord and tenant under which the landlord agrees not to exercise any or all of the landlord's rights under this Part or waives such rights in favour of the tenant.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Landlord and Tenant Short title Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 50

An Act to amend the Residential Tenancies Act

Mr. Shymko



1st Reading

June 3rd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to exempt an agreement from the Act whereby a landlord waives a right in favour of the tenant.

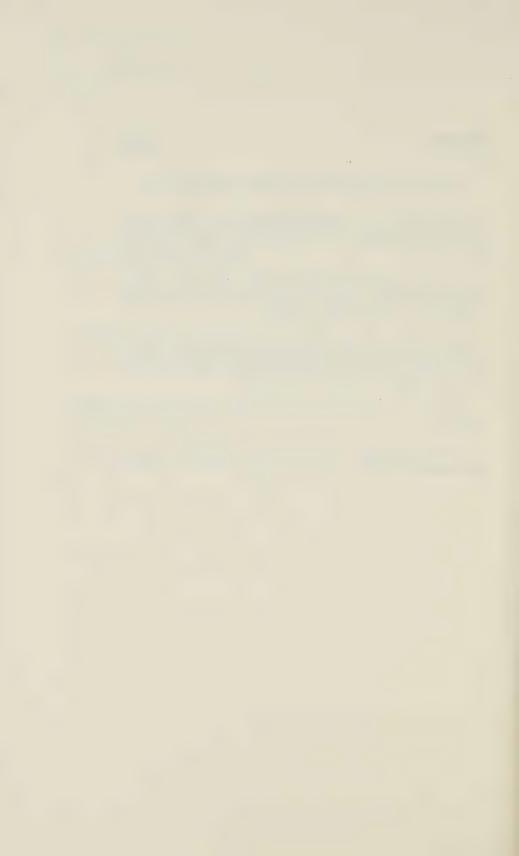
Bill 50

1986

An Act to amend the Residential Tenancies Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the Residential Tenancies Act, being chapter 452 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:
- (3) This Act does not apply to an agreement between a Exemption landlord and tenant under which the landlord agrees not to exercise any or all of the landlord's rights under this Act or waives such rights in favour of the tenant.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Residential Tenancies Short title Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill51

An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

The Hon. A. Curling

Minister of Housing



1st Reading June 5th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill replaces Bill 78, introduced and given first reading at the last Session of the Legislature and subsequently withdrawn, and incorporates in large measure the recommendations made to the Minister of Housing by the Rent Review Advisory Committee in its report submitted to the Minister on the 18th day of April, 1986.

The Bill replaces the provisions of the *Residential Tenancies Act* that govern rent review matters with a new Act, to be called the *Residential Rent Regulation Act*, 1986. Among the principal features of the new Act proposed by the Bill are the following:

- 1. The percentage amount by which a landlord may increase the rent chargeable for a rental unit without applying for an order permitting the landlord to do so is set at 4 per cent in respect of rent increases that take effect on or after the 1st day of August, 1985, and before the 1st day of January, 1987; in respect of rent increases that take effect on or after the 1st day of January, 1987, and on or after the 1st day of January in subsequent years, the percentage will be that set out in the Residential Complex Cost Index as published annually by the Minister. The Index is calculated in accordance with the formula set out in Schedule A to the Bill.
- 2. Two categories of rental units that are exempt from rent review under the Residential Tenancies Act are, under the Bill, made subject to rent regulation effective the 1st day of August, 1985. These are,
 - i. a rental unit situate in a building, no part of which was occupied as a rental unit before the 1st day of January, 1976, and
 - ii. a rental unit that is a mobile home or mobile home site that was not occupied as a rental unit before the 1st day of January, 1976.
- 3. A landlord who desires to increase the rent charged for a rental unit by more than the relevant percentage is required to apply, in the first instance, to the Minister of Housing for an order permitting the landlord to do so. The authority to consider such an application and make an order may be delegated by the Minister to named officials of the Ministry of Housing. Procedures are set out in the Bill to be followed where such an application is made.
- 4. A board to be known as the Rent Review Hearings Board is established to which a landlord or a tenant may appeal from an order made on the initial application. A further appeal lies on a question of law from an order of that Board to the Divisional Court. No filing fees are required in respect of an appeal to the Board nor, in the case of a tenant appeal, is there a requirement that any number or proportion of tenants bring the appeal. Provision is made for the holding of a pre-hearing conference to discuss matters relevant to the conduct of an appeal to the Board.
- 5. Provision is made for the establishment of a rent registry that will initially compile information on the rent charged and other relevant matters in respect of residential complexes containing more than six rental units; residential complexes that contain six or fewer rental units will be brought into the registry at a later date to be prescribed, although a landlord of such a residential complex may voluntarily file the information in respect of that complex at any earlier time. Landlords will be required to file the actual rent being charged for a rental unit on the 1st day of July, 1985, or if a rental unit is not rented on that date, the rent charged when it is first rented. Tenants may dispute within a specified time period the amount of the actual rent as recorded in the rent registry; otherwise the rent recorded is deemed to be the lawful rent. Landlords who register within the time specified for doing so will not be liable to an order requiring a rebate of any excess rent that may have been collected prior to August 1st, 1985; those who do not will remain liable to an order requiring

a rebate of any excess rent collected during the six year period preceding the date of any application for rebate. After January 1st, 1987, no application under the Act made by a landlord who has not registered will be proceeded with whether the time for doing so has expired or not. Provision is made for the Minister to investigate on his or her own initiative the level of the rent charged for a rental unit to determine if the rent is a lawful rent.

- 6. Where an order has been made under the *Residential Tenancies Act*, or is made under the new Act proposed by the Bill, for a rent increase because of an increase in financing costs that took effect on or after August 1st, 1985, at the time those increased costs are no longer borne by the landlord the Minister may require a reduction in the rents being charged.
- 7. The interim restraint on the pass-through of increased financing costs resulting from the purchase of a residential complex, contained in the Residential Complexes Financing Costs Restraint Act, 1982, is placed on a permanent footing. The suspension of the 2 per cent relief of hardship provision contained in that Act is, however, lifted. Restored also is the provision permitting equalization of rents for similar rental units, under certain conditions, which had been suspended under the operation of that Act.
- 8. The allowance for a landlord's increased operating costs will be calculated in accordance with the formula set out in Schedule B to the Act.
- 9. In respect of pre-1976 residential complexes whose rent is "chronically depressed", as defined, provision is made for an allowance to be phased in to bring the rents to a level where they are no longer depressed.
- 10. In respect of post-1975 residential complexes whose landlords are experiencing an "economic loss", as defined, provision is made for an allowance to be phased in to bring the rents to a level where the landlord no longer experiences an economic loss.
- 11. A landlord and one or more tenants may jointly apply to determine the rent increase that will be permitted because of capital expenditures incurred or to be incurred that will affect some but not all of the rental units in a residential complex.
- 12. Without bringing an application to increase rents, a landlord may apply for an order permitting equalization over a period of time of the rents charged for similar rental units within a residential complex; a limit is set on the amount of rent increase attributable to equalization that may be charged for any rental unit.
- There will be a Residential Rental Standards Board empowered to develop and establish appropriate maintenance standards to apply to all residential complexes.
- 14. The extraction of additional charges (sometimes referred to as key money) as a condition to renting or subletting any rental unit is made an offence under the Act.
- 15. The Lieutenant Governor in Council is empowered to prescribe by regulation procedural and interpretative rules and policies and these will be binding on the Minister or the Minister's delegates and on the Board in the interpretation and administration of the Act; additional extensive regulation-making powers are conferred on the Lieutenant Governor in Council to prescribe in detail the manner in which applications under the Act will be dealt with.
- 16. The Bill contains an expanded offences provision; it will, for example, be an offence for a landlord to charge a rent that is in excess of that permitted under

- the Act or to fail to file the information required for the purposes of the rent registry.
- 17. Provisions are included in the Bill that set out the consequences, and the procedures to be followed, where a landlord has increased the rent charged for a previously exempt rental unit to take effect on or after the 1st day of August, 1985, by more than 4 per cent.

Bill 51 1986

An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

- "Board" means the Rent Review Hearings Board established under this Act;
- "economic loss" means the loss experienced by a landlord whose rate of return on a residential complex does not result in a financial loss but does result in a return on the landlord's invested equity and capitalized losses that is less than the rate of return made applicable to that residential complex by subsection 77 (1);
- "landlord" includes the owner, or other person permitting occupancy of a rental unit, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying the rental unit, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;
- "mail" means first-class, registered or certified mail;
- "maximum rent" means the lawful maximum rent which could be charged for a rental unit had all permissible statutory or other increases which could have been taken on or after the 1st day of August, 1985, been taken;
- "Minister" means the Minister of Housing or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

"Ministry" means the ministry of the Minister;

"mobile home" means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed;

"mobile home park" means the rental units, and the land, structures, services and facilities of which the landlord retains possession and that are intended for the common use and enjoyment of the tenants of the landlord, where two or more occupied mobile homes are located for a period of sixty days or more;

R.S.O. 1980, c. 91

- "non-profit co-operative housing corporation" means a corporation incorporated without share capital under the Co-operative Corporations Act or any predecessor thereof or under similar legislation of Canada or any province, the main purpose and activity of which is the provision of housing for its members, and the charter or by-laws of which provide that,
 - (a) its activities shall be carried on without the purpose of gain for its members,
 - (b) on dissolution, its property after payment of its debts and liabilities shall be distributed to non-profit or charitable organizations,
 - (c) housing charges, other charges similar to rent, or any other charges payable by members are decided by a vote of the members or of a body duly elected or appointed by the members, or a committee thereof,
 - (d) termination of occupancy rights may be brought about only by a vote of the members or of a body duly elected or appointed by the members, or a committee thereof, and that the member whose occupancy rights are terminated has a right to appear and make representations prior to such vote;

"prescribed" means prescribed by the regulations made under this Act;

"rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental unit, whether or not a separate charge is made for such services and facilities, privilege, accommodation or thing but does not include,

- (a) any amount required by the *Retail Sales Tax Act* to R.S.O. 1980, be collected from a tenant by a landlord, or
- (b) any amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord to a municipality in respect of a mobile home, or a home which is a permanent structure, owned by a tenant;
- "rental unit" means any living accommodation, site for a mobile home or site on which a home is a permanent structure, used or intended for use as rented residential premises and includes a room in a boarding house or lodging house;
- "residential complex" means a building, related group of buildings or mobile home park, in which one or more rental units are located and includes all common areas, services and facilities available for the use of residents of the building, buildings or park;

"services and facilities" includes,

- (a) furniture, appliances and furnishings,
- (b) parking and related facilities,
- (c) laundry facilities,
- (d) elevator facilities,
- (e) common recreational facilities,
- (f) garbage facilities and related services,
- (g) cleaning or maintenance services,
- (h) storage facilities,
- (i) intercom systems,
- (i) cablevision facilities.
- (k) heating facilities or services,

- (1) air-conditioning facilities,
- (m) utilities and related services,
- (n) security services or facilities;
- "statutory increase" means the amount by which the rent charged for a rental unit may be increased without application to the Minister under this Act or may have been increased without application under the Residential Tenancies Act or under The Residential Premises Rent Review Act, 1975 (2nd Session);

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

"subsidized public housing" means a rental unit rented to persons or families of low or modest income who pay an amount geared-to-income for that unit by reason of public funding provided by the Government of Canada, Ontario or a municipality, including a regional, district or metropolitan municipality, or by any agency thereof, pursuant to the *National Housing Act* (Canada), the *Housing Development Act* or the *Ontario Housing Corporation Act*;

R.S.C. 1970, c. N-10 R.S.O. 1980, cc. 209, 339

- "tenancy agreement" means an agreement between a landlord and a tenant for occupancy of a rental unit, whether written, oral or implied;
- "tenant" means a person who pays rent in return for the right to occupy a rental unit and his or her heirs, assigns and personal representatives but does not include a person who has the right to occupy a rental unit by virtue of being a co-owner of the residential complex in which the rental unit is situate or a shareholder of a corporation that owns the residential complex, and a sub-tenant is a tenant of the person giving the sub-tenant the right to occupy the rental unit.

Application of Act

2.—(1) This Act applies to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.

Conflict 1981, c. 53 (2) Where a provision of this Act conflicts with a provision of any other Act, except the *Human Rights Code*, 1981, the provision of this Act applies.

Conflict with provision in written agreement

(3) Notwithstanding subsection (1), where a provision in a written tenancy agreement between a landlord and a tenant conflicts with the provisions of this Act concerning the amount of rent which may be charged for a rental unit, and where the tenancy agreement was entered into before the 1st day of May, 1985, in respect of a rental unit which was, before the 1st day of August, 1985, exempt from Part XI of the *Residen*-

R.S.O. 1980, c. 452 tial Tenancies Act under clause 134 (1) (c) or (d) of that Act, the provision in the agreement applies to the rental unit so long as the tenant who entered into the agreement remains the tenant of the rental unit.

(4) Notwithstanding subsection (1), where a written agree- Idem ment between a landlord and a tenant, entered into before the day this section comes into force, contains a provision requiring the landlord to repay to the tenant any amount of rent that the landlord has charged in excess of that permitted by Part XI of the Residential Tenancies Act or by The Residential R.S.O. 1980, Premises Rent Review Act, 1975 (2nd Session), or permitting c. 452 the tenant to recover such an amount by deducting c. 452 the tenant to recover such an amount by deducting a sum Sess.), c. 12 from the tenant's rent for a number of rent payment periods, the provision applies notwithstanding anything to the contrary in this Act.

3. This Act is binding on the Crown.

Act binds

4.—(1) This Act does not apply to,

Exemptions

- (a) transient living accommodation provided in a hotel, motel, suite hotel, inn, tourist home or hostel;
- (b) living accommodation occupied as a vacation home for a seasonal or temporary period;
- living accommodation, whether situate on or off a farm, where occupancy of the premises is conditional upon the occupant continuing to be employed on the farm:
- (d) living accommodation provided by a non-profit cooperative housing corporation to its members;
- living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care;
- living accommodation established to temporarily shelter persons in need;
- living accommodation provided in connection with the purposes for which the institution is established by a hospital, a nursing home or a home for the aged;
- (h) living accommodation provided by an educational institution to its students or staff where,

- (i) the living accommodation is provided primarily to persons under the age of majority, or
- (ii) all major questions related to the living accommodation are decided after consultation with a council or association representing the residents.

unless the living accommodation has its own selfcontained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households:

- living accommodation situate in a building or project used in whole or in part for non-residential purposes where the occupancy of the living accommodation is necessarily connected with the employment of the occupant in, or the performance by him or her of services related to, a non-residential business or enterprise carried on in the building or project;
- (j) premises occupied for business or agricultural purposes with living accommodation attached under a single lease unless the person occupying the living accommodation is a person other than the person occupying the premises for business or agricultural purposes, in which case the living accommodation shall be deemed to be a rental unit.

Idem (2) This Act, except sections 5 and 6, does not apply to,

- (a) a rental unit situate in a residential complex owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, except where otherwise prescribed, but where the tenant occupying the rental unit pays rent to a landlord which is not the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, this Act does apply;
- (b) a rental unit situate in a non-profit housing project, rents for which are subject to the approval of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof;

- (c) a rental unit not otherwise exempt from this Act that is provided by an educational institution to a student or member of its staff except that, where there is a council or association representing the residents, the exemption does not apply in respect of a rent increase unless there has been consultation with the council or association respecting the increase:
- a rental unit situate in a residential complex owned, operated or administered by a religious institution for a charitable use on a non-profit basis.
- (3) This Act does not apply to an increase in the amount Subsidized geared-to-income paid by a tenant in subsidized public housing who is occupying a rental unit, other than a unit referred to in clause (2) (a) or (b), but this Act does apply to the unit itself

PARTI

NOTICE OF RENT INCREASES

5.—(1) The rent charged for a rental unit shall not be Notice of increased unless the landlord gives the tenant a notice in the prescribed form setting out the landlord's intention to increase the rent and the amount of the increase, expressed both in dollars and as a percentage of the current rent, intended to be made not less than ninety days before the end of,

rent increase

- (a) a period of the tenancy; or
- (b) the term of a tenancy for a fixed period.
- (2) An increase in rent by the landlord where the landlord Increase has not given the notice required by subsection (1) is void.

void where no notice

(3) Subsections (1) and (2) do not apply to a rent increase for a rental unit where the rent increase takes effect when a for new new tenant first occupies the rental unit under a new tenancy tenant agreement.

Notice unnecessary

(4) A notice of rent increase given in compliance with this Notice of section and section 20 or in compliance with subsection 60 (1) and section 99 of the Residential Tenancies Act shall be deemed deemed to be and always to have been sufficient notice for the with purposes of section 123 and subsection 129 (1) of the R.S.O. 1980, Landlord and Tenant Act.

increase c. 232, ss. 123. 129 (1)

Where tenant fails to give notice of termination **6.**—(1) Where a tenant who has been given a notice of an intended rent increase under section 5 fails to give the landlord proper notice of termination under the *Landlord and Tenant Act*, the tenant shall be deemed to have accepted the amount of rent increase that does not exceed the amount allowed under this Act.

Deemed acceptance not to constitute waiver of tenant's rights

(2) The deemed acceptance by a tenant of an increase in rent in the case mentioned in subsection (1) does not constitute a waiver of the tenant's rights to take whatever proceedings are available under this Act in respect of the rent that may be charged for a rental unit.

Rent chargeable until order takes effect

- **7.** Where a notice of an intended rent increase has been given under section 5, a rent increase up to the lesser of,
 - (a) the intended rent increase specified in the notice; and
 - (b) the limit imposed by section 68,

may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

PART II

GENERAL

Administration **8.** The Minister is responsible for the administration of this Act.

Minister may establish regions

9. The Minister may by order establish regions in Ontario for the purposes of this Act.

Proceedings in region

10. All proceedings under this Act shall be held in the region in which the residential complex in question is situate unless the Minister or the Board, as the case may be, otherwise directs.

Duties of Minister

- 11. The Minister shall,
 - (a) provide information and advice to the public on all residential tenancy matters including referral where appropriate to social or community services and public housing agencies;
 - (b) investigate cases of alleged failure to comply with an order made under this Act or to comply otherwise with the provisions of this Act and, where the

circumstances warrant, commence or cause to be commenced proceedings in respect of the alleged failure to comply:

- take an active role in ensuring, by any suitable method, including the making of grants, that landlords and tenants are aware of the benefits and obligations established by this Act: and
- (d) establish such committee or committees as the Minister considers advisable to periodically review and make recommendations, commencing in 1989, to the Minister concerning the Residential Complex Cost Index and the Building Operating Cost Index.
- 12. The Minister may in writing delegate any power or Delegation duty granted to or vested in the Minister under this Act to any officer or employee of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in the delegation.

13.—(1) Subject to subsections (4) and (5), the Minister Exclusive and, on an appeal or where a matter has been referred to it by jurisdiction of Minister the Minister, the Board, have exclusive jurisdiction to exam- and Board ine into and determine all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Minister and the Board.

(2) The Minister and the Board, in the interpretation and Procedural administration of this Act, shall observe such procedural and interpretative interpretative rules and policies as are prescribed.

rules and policies

(3) The Minister, on the application of a landlord or a ten-Minister may ant, or on the Minister's own motion, may make an order determine application determining,

of Act, etc.

- (a) whether this Act applies to a particular rental unit or residential complex:
- (b) the rental units, common areas, services and facilities that are included in a particular residential complex;
- whether an agreement referred to in subsection 94 (4) has been entered into by a tenant as a result of some form of coercion exercised by the landlord; and

(d) any other prescribed matter of concern respecting the application of this Act.

No order for payment over \$3,000

(4) In any proceedings under this Act, neither the Minister nor the Board shall make an order for the payment of money in excess of \$3,000, but where the Minister or the Board would be justified in making an order for the payment of money in excess of \$3,000, the person to whom the payment would otherwise be made may, by notice in writing in the prescribed form filed with the Minister or the Board, abandon the excess over \$3,000 and the Minister or the Board in that case may make an order for the payment of \$3,000 to the person and the abandonment extinguishes all rights in respect of the excess.

Court jurisdiction (5) Where, under this Act, a person claims a sum of money in excess of \$3,000, he or she may institute proceedings therefor in any court of competent jurisdiction and the court may exercise any powers that the Minister or the Board could have exercised had the proceedings been before the Minister or the Board.

Establishment of Residential Rental Standards Board **14.**—(1) There shall be a board to be known as the Residential Rental Standards Board composed of such number of members as the Lieutenant Governor in Council appoints.

Functions

- (2) The function of the Residential Rental Standards Board is to develop and establish,
 - (a) appropriate maintenance standards to apply to all residential complexes and the rental units therein that are subject to this Act;
 - (b) methods of ensuring that landlords and tenants are made aware of the requirements of the maintenance standards;
 - (c) any other measures designed to ensure that all residential complexes and the rental units therein are kept and maintained in a fit condition for habitation as rented residential premises; and
 - (d) methods of providing for adequate communication and consultation between the landlord and the tenants on a timely basis regarding proposed capital expenditures in respect of a residential complex.

Definitions

15.—(1) In this section,

"municipality" means a city, town, village and township;

- "standards" means the maintenance standards established by the Residential Rental Standards Board.
- (2) The council of every municipality is responsible for the Every enforcement of the standards in the prescribed manner.

municipality to enforce maintenance standards

(3) Where the council of a municipality determines that a residential complex, or any rental unit situate therein, does not comply with the standards, the council shall give notice in pliance writing to the Minister of the non-compliance.

Notice to Minister of non-com-

(4) Where the council of the municipality that has given notice to the Minister under subsection (3) determines that the residential complex and the rental units situate therein comply with the standards, the council shall give notice in writing to the Minister of the compliance.

Notice to Minister of compliance

(5) Where the Minister receives a notice under subsection Applications (3), the Minister shall not proceed with any application by the landlord of the residential complex referred to in the notice proceeded for an increase in the rent of any rental unit situate therein nor shall the Board proceed with any appeal brought by the landlord in respect of an order made on the landlord's application unless.

or appeals

- (a) the Minister receives a notice under subsection (4); or
- (b) the Minister or the Board, as the case may be, determines that the non-compliance arose by reason of matters beyond the control of the landlord or that for any other reason the application or appeal ought to proceed.

PART III

PROCEDURE

16. A person may make an application to the Minister as a Who may landlord or as a tenant, provided the person was a landlord or application a tenant at the time the conduct giving rise to the application occurred.

17.—(1) An application to the Minister shall be made in Form of the prescribed form and shall be signed by the person making the application or his or her agent.

application

(2) Where a landlord makes an application to the Minister Where name of the application o and the name of any tenant directly affected by the appli- not known

cation is not known to the landlord, the name of the tenant may be shown in the application as "tenant" and all orders shall be binding on the tenant occupying the rental unit as if the tenant had been correctly named.

Where name of landlord not known

(3) Where a tenant makes an application to the Minister and the name of the landlord is not known to the tenant, the name of the landlord may be shown in the application as "landlord" and all orders shall be binding on the landlord as if the landlord had been correctly named.

Landlord must give copy of application to tenant, etc.

18.—(1) Where a landlord makes an application to the Minister, the landlord shall within ten days give a copy of the application to any tenant, sub-tenant or occupant who, at the time the application is made, is directly affected by the issues raised in the application.

Tenant must landlord

(2) Where a tenant makes an application to the Minister, application to the tenant shall within ten days give a copy of the application to the landlord.

Where new landlord or new tenant

(3) Where, before an order is made in respect of any application to the Minister, a landlord or tenant is succeeded by a new landlord or tenant, the applicant shall within ten days of becoming aware of such change give the new landlord or tenant a copy of the application.

Minister may give written directions

(4) The Minister shall, on request, give written directions concerning the giving of copies of an application, and compliance with the directions of the Minister shall be deemed to be compliance with this section.

Extension of time for application,

(5) The Minister may, whether or not the time for making an application to the Minister or giving a copy of the application to any party or filing any documents has expired and where the Minister is of the opinion that it would not be unfair to do so, extend the time for the making of the application to the Minister or giving the application to any party or the filing of any documents, and the Minister may attach such terms and conditions to the extension of time as the Minister considers appropriate and shall give notice in writing of the extension of time to all affected parties.

Application of subss. (1-5) to appeals

(6) The provisions of subsections (1) to (5) apply with necessary modifications to appeals to the Board under Part VII of this Act.

Nonapplication to joint applications

(7) This section, except for subsection (5), does not apply to a landlord and any tenants who jointly make an application under section 83 or 86, or who jointly appeal an order made pursuant to the application.

19.—(1) A tenant who has sublet a rental unit may give Notice to notice in writing to the landlord that the tenant requires the rental unit landlord to give him or her a copy of any application made by sublet the landlord under this Act or any other notice required to be given by the landlord under this Act that affects the rental unit that is the subject of the subletting and where the tenant does so the landlord shall give a copy of the application or other notice to the tenant by sending it by mail to the address set out in the notice given by the tenant.

(2) The landlord shall, before entering into a tenancy Information agreement with a new tenant, inform the new tenant of the prospective maximum rent for the rental unit and of any notice of rent new tenant increase given, any application made by the landlord under this Act and any order made in respect of such application, or of any appeal that is pending therefrom, that directly affects the rental unit.

20.—(1) Where this Act permits or requires a notice or Method of document to be given to a person, the notice or document is giving notice, sufficiently given by,

- (a) handing it to the person, or,
 - (i) where the person is a landlord, to any employee of the landlord exercising authority in respect of the residential complex, or
 - (ii) where the person is a tenant, sub-tenant or occupant, to an apparently adult person in the rental unit:
- (b) leaving it in the mail box where mail is ordinarily delivered to the person;
- (c) where there is no mail box, leaving it at the place where mail is ordinarily delivered to the person; or
- (d) sending it by mail to the address where the person resides or carries on business.
- (2) Where a notice or document is given by mail, it shall be Where notice deemed to have been given on the fifth day after mailing.

(3) Despite the other provisions of this section, the Minis-Minister or ter or the Board, as the case may be, may in writing direct a Board may give written notice or document to be given in any other manner.

given by

1986

Actual notice is sufficient

(4) Despite the other provisions of this section, a notice or document shall be deemed to have been validly given where it is proven that the contents of the notice or document actually came to the attention of the person for whom the notice or document was intended within the time for the giving of the notice or documents under this Act.

Computation of time

(5) The computation of time under this Act shall be in accordance with prescribed rules.

Parties to application or appeal

21. The parties to an application or an appeal are the persons making the application or appeal, any person entitled, other than under subsection 18 (3), to receive a copy of the application or a notice of appeal and any person added as a party by the Minister or the Board.

Changing parties; amending applications

- **22.** Where, in any proceedings under this Act, the Minister or the Board is of the opinion that,
 - (a) a person who should be included as a party has not been included as a party or that a party has been incorrectly named, the Minister or the Board, as the case may be, shall, unless it would be unfair to do so, require that the person be substituted or added as a party to the proceedings, or be correctly named;
 - (b) a person who has been included as a party should not be included as a party, the Minister or the Board, as the case may be, shall require that the person be removed as a party to the proceedings; or
 - (c) an amendment to the application or the notice of appeal is justified and fair, the Minister or the Board, as the case may be, may direct the application or notice of appeal be amended accordingly.

Frivolous or vexatious applications or appeals 23. The Minister or the Board, as the case may be, may refuse to continue any proceedings where, in the opinion of the Minister or the Board, as the case may be, the matter is trivial, frivolous, vexatious or has not been initiated in good faith.

Withdrawing application

24.—(1) An applicant may withdraw an application at any time before the time for submitting representations has ended and thereafter the application may only be withdrawn with the consent of the Minister and the Minister may impose terms on which his or her consent is given.

(2) A landlord who is party to a joint application under sec- Withdrawing tion 83 or 86 may withdraw the application as provided in subsection (1).

(3) Where all the tenants who are parties to a joint appli- Idem cation under section 83 or 86 desire to withdraw the application, they may do so as provided in subsection (1).

(4) Where the tenants of less than all of the rental units Idem subject to a joint application under section 83 or 86 desire to withdraw the application, they may withdraw their rental units from the application as if they were withdrawing an application under subsection (1) and the application shall continue in respect of the remaining rental units that are subject to the application.

(5) A landlord or tenant may withdraw an appeal at any Withdrawing time before the hearing of the appeal has commenced but, where the hearing has commenced, the appeal may only be withdrawn with the consent of the Board and the Board may impose terms on which its consent is given.

(6) Where an appeal of an order made under section 84 or Withdrawing 86 has been brought jointly by a landlord and one or more tenants, the appeal may be withdrawn under subsection (5) only where the landlord or all tenants who are parties to the appeal desire to withdraw the appeal.

25.—(1) Where a landlord or a tenant makes an application other than under section 71 or 83, the party making the document by tenant application shall, not later than fifteen days from the date of making the application, file with the Minister the documents and material the party relies upon in support of the application and such other material as may be prescribed.

(2) Any party to an application referred to in subsection (1) Inspection may inspect the application and the documents and material filed in respect thereof and may submit representations in representrespect of the application and the material filed therewith not later than thirty days from the date of making the application, or such later date as the Minister may allow.

submission of

(3) Where the Minister extends the date for filing set out in Effect of subsection (1), the Minister shall notify the parties affected by of time the application of the extended filing date and the parties shall be permitted fifteen days from the extended filing date to submit representations as provided for in subsection (2).

26. All parties to a proceeding under this Act and all per-Parties may sons who have received a notice under section 27 are entitled

to examine, and the Minister and the Board, as the case may be, shall make available for examination all material filed with the Minister or the Board pertaining to the proceeding.

Notice by Minister 27.—(1) Before making any order that the Minister is empowered to make on his or her own motion, the Minister shall give a notice in the prescribed form to any persons who would be directly affected by the order, and the Minister shall not make an order sooner than sixty days after the giving of the notice.

Submission of documents and representations (2) Any person who receives a notice under subsection (1) may, not later than thirty days from the receipt of the notice, submit documents and make representations to the Minister in respect thereof.

Referral of application to Board

28. The Minister may at any time in his or her discretion refer any application made to the Minister, or any matter that has been commenced on the Minister's own motion, to the Board and the Board in such case shall hear and determine the application or matter as though it were an appeal under Part VII.

Powers of Minister

- **29.**—(1) The Minister in respect of any application, or any matter that has been commenced on the Minister's own motion, under this Act may,
 - (a) conduct any enquiry or inspection of documents or premises the Minister considers necessary;
 - (b) question any person, by telephone or otherwise;
 - (c) convene a meeting between the parties to the application or between any persons directly affected by the order for the purpose of discussion of issues raised by the application or matter; and
 - (d) by notice in writing, direct any party to the application, or any person directly affected by the matter, to file, within such time as is set out in the notice, such information or additional information as the Minister considers necessary.

Time and place of meeting

(2) So far as is practicable, the Minister shall hold the meeting mentioned in clause (1) (c) at a time and place agreed to by the parties or persons directly affected.

Inspection

(3) Where, under clause (1) (d), the Minister has directed information or additional information to be filed, the Minister shall notify each of the other parties to the application or per-

sons directly affected of the direction and any other party to the application or person directly affected may inspect the information or additional information filed and may submit representations in respect thereof not later than twenty days from the date on which the information or additional information was required to be filed.

(4) Where a direction under clause (1) (d) is in respect of Time for an application made under section 71 (whole building review), submitting representany party to the application may submit representations in ations respect thereof not later than forty days before the effective date of the first rent increase applied for or not later than twenty days from the date on which the information or additional information was required to be filed, whichever the last occurs.

(5) Where any party to an application fails to comply with a Where direction of the Minister under clause (1) (d) to file any information or additional information or additional information, the Minister may,

information not filed

- (a) in the case of the applicant, refuse to make an order granting the application or that part of the application relating to the failure to comply with the direction; and
- (b) in the case of any other party to the application, or person directly affected by the matter, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.
- 30. In making any determination in an application under Matters to be this Act, the Minister,

by Minister

- shall consider any documents, material and oral or written representations submitted in respect of the application; and
- (b) may consider any relevant information obtained by the Minister in addition to the information referred to in clause (a), provided that the Minister first informs the parties of the additional information and gives them an opportunity to explain or refute it.
- 31. Where an application is made to the Minister under Nonthis Act, or where the Minister gives a notice under section 27, the Minister is not required to hold a hearing in respect of R.S.O. 1980, the application or the matter referred to in the notice and the

application

1986

Statutory Powers Procedure Act does not apply to the Minister in the exercise of a statutory power of decision under this Act.

Order of Minister final **32.**—(1) An order made by the Minister under this Act, subject to Part VII, is final, binding and not subject to review and shall take effect and is enforceable according to its terms from the date it is made.

Copy of order

(2) Where the Minister makes an order under this Act, the Minister shall forthwith give a copy of the order to each of the parties to the application, or where the order is made on the Minister's own motion, to each person directly affected by the order, together with a written summary in the prescribed form of reasons for the order.

Terms and conditions

33.—(1) The Minister or the Board may include in any order terms and conditions the Minister or the Board, as the case may be, considers proper in all the circumstances.

Clerical errors

(2) An order made by the Minister or by the Board that contains a clerical error or omission of the Minister or the Board may be amended by the Minister or the Board, as the case may be, at any time before the hearing of any appeal of the order has been commenced.

Enforcement of order for the payment of money **34.**—(1) A certified copy of an order of the Minister or the Board, as the case may be, for the payment of money may be filed with the Supreme Court or with the District Court and, on being filed, the order has the same force and effect and all proceedings may be taken on it as if it were a judgment of that Court.

Variation of order

- (2) Where an order filed under subsection (1) is rescinded or varied, upon filing in accordance with subsection (1), the order or decision rescinding or varying the order previously made,
 - (a) if the order or decision rescinds the order previously made, the order previously made ceases to have effect for the purposes of subsection (1); or
 - (b) if the order or decision varies the order previously made, the order previously made as so varied may be enforced in a like manner as an order or decision filed under subsection (1).

PART IV

RENT REVIEW HEARINGS BOARD

- 35. A board to be known as the Rent Review Hearings Board Board is established.
- **36.**—(1) The Board shall be composed of such number of Composition members as the Lieutenant Governor in Council may appoint.
- (2) The members of the Board who are not members of the Remuneration public service of Ontario shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines

(3) The Public Service Superannuation Act and the Application Superannuation Adjustment Benefits Act apply to members of R.S.O. 1980, the Board.

cc. 419, 490

37. Members of the Board, other than the vice-chairman, shall not be members of the public service of Ontario, and shall hold office during pleasure.

Term of

38. Subject to subsection 100 (2), one member of the Quorum Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Board in any proceedings before the Board.

39.—(1) The Lieutenant Governor in Council shall Chairman appoint one of the members of the Board as chairman, and chairman another of the members as vice-chairman.

(2) The chairman shall from time to time assign members Chairman of the Board to its various sittings and shall be the chief executive officer of the Board.

chief executive officer

(3) The vice-chairman is responsible for the general administration of the affairs of the Board and where the chair- of chairman man is absent or unable to act, the vice-chairman may act as chairman.

Absence,

40. Where a member of the Board resigns or retires, or Completion for any other reason ceases to be a member, the member of matters by may, with the consent of the chairman, in connection with any members matter in which the member participated as a member of the who resign or Board, carry out and complete any duties or responsibilities retire, etc. and exercise any powers that the member would have had if the member had not ceased to be a member of the Board.

Members full time

41. The members shall devote the whole of their time to the performance of their duties as members of the Board, and shall not accept or hold any office or employment inconsistent with such duties.

Staff c. 418

42. Such employees as are required for the purposes of R.S.O. 1980, the Board may be appointed under the *Public Service Act*.

Professional assistance

43. Subject to such conditions as the Minister may set, the Board may engage persons other than those appointed under section 42 to provide professional, technical or other assistance to the Board and may establish the duties and terms of the engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity for acts done in good faith

44. No action or other proceeding for compensation or damages shall be instituted against the Board, any member of the Board or any member of the Board staff, for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Publication of decisions

45. The Board shall, at least annually, prepare and publish a summary of significant decisions of the Board and the reasons therefor.

Board to adopt expeditious procedures

46. The Board shall adopt the most expeditious method of determining the questions arising in any proceeding that affords to all persons affected by the proceedings an adequate opportunity to know the issues and be heard on the matter.

Decision to be on merits

47.—(1) Every decision of the Board shall be upon the real merits and justice of the case.

Board to ascertain substance of transactions and activities, etc.

- (2) In determining the real merits and justice of the case, the Board shall ascertain the real substance of all transactions and activities relating to the residential complex and the good faith of the participants and in doing so,
 - (a) may disregard the outward form of the transaction or the separate corporate existence of the participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex.

Audit

48. The accounts of the Board shall be audited annually by the Provincial Auditor.

49.—(1) The Board shall at the close of each year file with Annual the Minister an annual report upon the affairs of the Board.

(2) The Board shall make such further reports to the Minister and provide the Minister with such information as the Minister from time to time requires.

Further reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and shall then lay the reports before the Assembly if it is in session or, if not, at the next ensuing session.

Tabling of reports

50. All expenses incurred and expenditures made by the Moneys Board in the conduct of its affairs shall be paid out of moneys appropriated therefor by the Legislature.

51. The Board may charge and collect such fees as are Fees prescribed for furnishing to any person, at his or her request. copies of forms, notices or documents filed with or issued by the Board

PART V

RENT REGISTRY

52.—(1) In this Part,

Definitions

"actual rent" means the monthly rent actually charged for a rental unit as of the actual rent date:

"actual rent date" means,

- (a) the 1st day of July, 1985, or
- (b) where a rental unit was not rented on the 1st day of July, 1985, the first date on which that rental unit is rented after the 1st day of July, 1985.
- (2) Where the rent actually charged for a rental unit as of Conversion the actual rent date was for a rental period other than a monthly rent monthly period, that rent shall be converted in the prescribed manner to an equivalent monthly rent.
- 53. This Part does not apply to a residential complex, or Application any part of a residential complex, that is a boarding house or a lodging house unless there has been an order made under the Residential Tenancies Act in respect of the residential com- R.S.O. 1980, plex or any rental unit in the residential complex.

Establishment of rent registry by Minister **54.**—(1) The Minister shall establish and maintain a rent registry for all residential complexes that are subject to this Part.

Furnishing of information from rent registry (2) The Minister shall, on the request of any person made in the prescribed manner, furnish that person with the information recorded in the rent registry in respect of any rental unit.

Fees

(3) The Minister may charge such fees as are prescribed for furnishing information under subsection (2).

Filing of statement by landlord

- **55.**—(1) Every landlord of a residential complex containing more than six rental units shall file a statement in the prescribed form with the Minister,
 - (a) on or before the 1st day of October, 1986, in respect of all rental units in the residential complex that were rented on or before the day this Part comes into force; and
 - (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

- (2) Every landlord of a residential complex containing six or fewer rental units shall file the statement mentioned in subsection (1),
 - (a) on or before a date to be prescribed, in respect of all rental units in the residential complex that were rented on or before that date; and
 - (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

(3) Notwithstanding that a date has not been prescribed under subsection (2), a landlord of a residential complex containing six or fewer units may file the statement mentioned in subsection (1) at any time.

Contents of statement

56.—(1) The statement mentioned in section 55 shall set out the following information:

- The name and address of the landlord and, where 1. the landlord is not ordinarily resident in Ontario, the name and the address of the landlord's representative or agent in Ontario.
- The municipal addresses of all buildings which form 2. part of the residential complex.
- 3. The type (by number of bedrooms) and location (by suite number or other means of identification) of each rental unit in the residential complex that is subject to rent regulation, together with the actual rent for each such rental unit and the date on which the rent was last increased, or if the actual rent is the rent that was first charged, the date the actual rent was first charged.
- 4. Those services and facilities, accommodations and things included in the actual rent for which a separate charge is allocated and the amount of each.
- 5. Whether the landlord, as of the actual rent date, was responsible for providing hydro, water, heat, cable television or parking without the allocation of a separate charge.
- The provisions of any written tenancy agreement 6. mentioned in subsection 2 (3) which conflict with the provisions of this Act concerning the amount of rent that may be charged for a rental unit.
- 7. The type and location of each rental unit in the residential complex, if any, in respect of which the information in paragraphs 3 to 6 is not required to be set out in the statement, together with the reasons therefor.
- 8. Such other information as is prescribed.

(2) Subject to subsection (3), the statement filed with the Certification Minister under section 55 shall contain a certification signed by the landlord or, if the landlord is a corporation, signed by the president, secretary or other authorized senior officer thereof, certifying that the information contained in the statement, and any attachments thereto, is true, correct and complete to the best of the landlord's knowledge and belief.

(3) A landlord may authorize an agent in writing to make Certification the certification mentioned in subsection (2), and the Minister

may require a copy of the document authorizing the agent to make the certification to be filed.

Minister to calculate amount where prior order affects rental unit R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

57.—(1) Where an order issued under this Act, the Residential Tenancies Act or The Residential Premises Rent Review Act, 1975 (2nd Session) affects the rent which may be charged for a rental unit for which the actual rent has been set out in a statement filed under section 55, the Minister shall calculate the amount obtained by adding to the rent set out in the most recent such order all permissible statutory increases from the effective date of the rent in the order to the actual rent date.

Application within 90 days

(2) Where the actual rent for a rental unit set out in the statement is the same as or lower than the amount calculated under subsection (1), or does not exceed that amount by more than the prescribed percentage, the time for making an application under section 59 in respect of that rental unit shall be ninety days from the day the landlord or the tenant receives a notice under section 58.

Application within two years

(3) Where the actual rent for a rental unit set out in the statement exceeds the amount calculated under subsection (1) by more than the prescribed percentage, or where there are no prior orders affecting the rent which may be charged for a rental unit, the time for making an application under section 59 in respect of that rental unit shall be two years from the day the landlord or the tenant receives a notice under section 58.

Notice to landlord of rents recorded under s. 46

58.—(1) As soon as is practicable, the Minister shall give to every landlord who has filed a statement under section 55 a notice in the prescribed form setting out the information recorded for all rental units for which the statement was filed and the time for making an application under section 59.

Notice to tenant of rent recorded under s. 46 for tenant's rental unit (2) As soon as is practicable, the Minister shall give to the tenant of every rental unit in respect of which the landlord is given a notice under subsection (1) a notice in the prescribed form setting out the recorded information pertaining to the tenant's rental unit and the time for making an application under section 59.

Application to dispute information in notice **59.**—(1) A landlord or a tenant who has been given a notice under section 58 may, in the time permitted by subsection 57 (2) or (3), whichever applies, make an application in the prescribed form to the Minister to correct or amend any information in the notice or to dispute the legality of the actual rent.

(2) A landlord who has been given a notice under subsec- Application tion 58 (1) may in the time permitted by subsection 57 (2) or declaration (3), whichever applies, make an application in the prescribed of lawful rent form to the Minister for an order declaring the actual rent recorded in the rent registry to be the lawful maximum rent as of the actual rent date.

(3) Where no application under subsection (1) or (2) is Where actual made and no notice mentioned in subsection (4) is given, the is deemed rent recorded in the rent registry for such rental unit shall be lawful rent deemed to be the lawful maximum rent as of the actual rent date.

(4) In respect of any rental unit mentioned in subsection Minister may 57 (3), the Minister.

- (a) shall, in the case of a rental unit whose rent is affected by a prior order; and
- (b) may, in the case of a rental unit whose rent is not affected by a prior order,

investigate the rents charged for such rental unit and may, on the Minister's own motion, make any order which could have been made had the landlord or the tenant made an application under subsection (1) or (2), provided that the notice under subsection 27 (1) is given by the Minister within the time for making an application in respect of that rental unit.

60.—(1) In any application under section 59, the landlord Justification may justify the actual rent for any rental unit on the basis of of actual rent all permissible statutory increases and.

- (a) capital expenditures made on or after the 29th day of July, 1975 and before the 1st day of August, 1985, for the purpose of substantial renovations to the residential complex or to any rental unit therein:
- services and facilities added on or after the 29th day of July, 1975 and before the 1st day of August, 1985, in respect of the residential complex or any rental unit therein;
- (c) financing costs incurred on or after the 29th day of July, 1975 and before the 1st day of August, 1985, in respect of the residential complex; and

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12 (d) any costs that could have been allowed under the Residential Tenancies Act or The Residential Premises Rent Review Act, 1975 (2nd Session),

which were not considered in any application under the Residential Tenancies Act or The Residential Premises Rent Review Act, 1975 (2nd Session).

When subs. (1) does not apply (2) Subsection (1) does not apply to a rental unit situate in a residential complex in respect of which the statement mentioned in section 55 has not been filed within the time permitted for filing.

Order of Minister

- **61.** In any order made by the Minister under this Part, the Minister shall,
 - (a) declare the maximum rent that may be charged for each rental unit subject to the order and the earliest date that each may take effect; and
 - (b) require any necessary changes to be made to the information recorded in the rent registry.

Clerical

62. Where at any time the Minister is satisfied that any information recorded in the rent registry is incorrect due to a clerical error or omission, the Minister shall amend the rent registry accordingly and shall notify the affected parties of the corrected information.

Rebate ordered where statement filed on time 63.—(1) Where a landlord has filed a statement under section 55 within the time permitted for filing, no amount shall be ordered under subsection 92 (2) in respect of any excess rent paid before the 1st day of August, 1985 in respect of any rental unit for which the actual rent has been set out in the statement.

Rebate ordered where statement not filed or filed late (2) Where a landlord has not filed a statement under section 55 or has filed a statement later than the time permitted for filing, no amount shall be ordered under subsection 92 (2) for any excess rent paid more than six years before the filing date of a tenant's application under that subsection.

Where statement not filed within three months of time for filing **64.** Where a landlord fails to file a statement under section 55 in respect of a residential complex on or before the expiry of the three-month period following the time specified in that section for the filing of the statement, the Minister on his or her own motion may order that the landlord shall not collect any increase in the rent charged for any rental unit in the residential complex until the landlord has filed the required statement.

65. On or after the 1st day of January, 1987, no appli- Where no cation made by a landlord or appeal by the landlord therefrom under this Act shall be proceeded with by the Minister or the Board if the landlord has not filed a statement under section 55 in respect of the residential complex concerned, whether or not the time for filing the statement has expired.

66. The Minister shall keep current the information Register recorded in the rent registry by incorporating, where applic-to be kept current able.

- (a) an order made under this Act:
- (b) an order made under the Residential Tenancies Act; R.S.O. 1980.
- (c) a statutory increase permitted to be taken under this Act:
- (d) a statutory increase that was permitted under Part XI of the Residential Tenancies Act;
- a notice given under section 89; and
- (f) any other relevant change in the information recorded in the rent registry.

PART VI

RENT REGULATION

67. The rent charged for a rental unit shall not be Twelveincreased unless a period of at least twelve months has elapsed since the date of the last rent increase.

period between rent increases

68.—(1) Unless otherwise authorized under this Act, no Maximum landlord shall increase the rent charged for a rental unit,

application

- to take effect on or after the 1st day of August, 1985, and before the 1st day of January, 1987, by more than 4 per cent; and
- (b) to take effect on or after the 1st day of January, 1987, and to take effect on or after the 1st day of January in any subsequent year, by more than the percentage set out in the Residential Complex Cost Index for the year, as published by the Minister and calculated in accordance with the formula set out in Schedule A hereto.

of the last rent that was charged for the rental unit for an equivalent rental period.

Calculation and publication of Index by Minister (2) The Minister shall calculate the Residential Complex Cost Index that is applicable for each year and shall publish the Index in *The Ontario Gazette* not later than the 31st day of August of the immediately preceding year.

Application

(3) A landlord may increase the rent charged for a rental unit by more than the amount permitted by clause (1) (a) or (b) without making an application under this Act, provided that the amount of the rent after the increase is applied is not higher than the maximum rent as of the date the rent increase takes effect.

Landlord may apply although notice of rent increase not yet given **69.** A landlord may make an application under this Part despite the fact that the landlord may not have, in respect of any rental unit, given notice under section 5 (notice of rent increase), but nothing in this section relieves the landlord from compliance with section 5.

Application R.S.O. 1980, c. 452 **70.**—(1) This section applies only to rental units that, before the repeal of clauses 134 (1) (c) and (d) of the *Residential Tenancies Act* by section 122 of this Act, were exempt from Part XI of that Act.

Notice for rent increase of more than 4 per cent (2) Where a notice of rent increase to increase the rent charged for a rental unit by more than 4 per cent of the last rent that was charged for an equivalent rental period has been given before this section comes into force, to take effect on or after the 1st day of August, 1985, where the landlord makes an application permitted under clause (3) (b), the rent increase specified in the notice may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

Landlord to repay excess rent or bring application under s. 71

- (3) A landlord who has increased the rent charged for a rental unit by more than 4 per cent effective on or after the 1st day of August, 1985, pursuant to a notice of rent increase given before this section comes into force, shall, on or before the sixtieth day after the coming into force of this section,
 - (a) pay to the tenant of the rental unit the amount of the rent paid by the tenant that is in excess of a 4 per cent increase; or
 - (b) apply to the Minister under section 71 (whole building review) even though the time for making such an application set out in subsection 71 (3) has expired.

(4) Where a landlord fails to comply with clause (3) (a) or Where (b), the tenant may,

landlord fails to comply with cl. (3) (a)

- (a) deduct the amount of the rent paid by the tenant that is in excess of a 4 per cent increase from a subsequent rent payment and so continue until the full amount of the excess rent has been satisfied; or
- (b) make an application to the Minister under subsection 92 (2).
- 71.—(1) Where a landlord desires to increase the rent that Application by landlord may be charged for a rental unit by more than the amount permitted by section 68, the landlord may apply to the Minister in the prescribed form for an order permitting the landlord to do so, whether or not the rental unit is the subject of a tenancy agreement at the time of application.

(2) When the landlord applies to the Minister under subsec- Whole tion (1), the landlord shall, as part of the same application, review apply for a determination of the rents that may be charged for all of the rental units in the residential complex in which the units are situate when such units are rented or re-rented during the twelve-month period following the effective date of the first rent increase applied for, whether or not those units are the subject of tenancy agreements at the time of application.

(3) An application made under this section shall be made Time for not later than ninety days before the effective date of the first application intended rent increase.

(4) At the time the application is filed, the landlord shall Filing of file with the Minister a cost revenue statement in the prescribed form together with all documents that the landlord relies upon in support of the application and such other material as may be prescribed.

(5) Any party to the application may submit material and Inspection make representations in respect of the application not later than forty days before the effective date of the first rent increase applied for.

(6) Where the Minister extends the date for filing under Extension subsections (3) and (4) or the date for submitting material and making representations under subsection (5), the Minister shall notify each of the parties affected by the application of the extended date and any party shall be permitted up to forty days before the effective date of the first rent increase applied for or twenty days from the extended date, whichever is the

later, to submit material and make representations in respect of the application.

Determination by Minister of total rent increase

- **72.** Where an application is made by a landlord to the Minister under section 71, the Minister shall determine the total rent increase for the residential complex that is justified by,
 - (a) the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
 - (b) the findings of the Minister concerning financing costs, capital expenditures and extraordinary operating costs that the landlord has experienced or will experience in respect of the residential complex;
 - (c) the degree to which actual financing costs or capital expenditures vary from the projected amounts allowed in respect of such costs or expenditures in a previous order made under this Act or the *Residential Tenancies Act*;

R.S.O. 1980, c. 452

- (d) the prescribed allowances for management and administration in respect of capital expenditures;
- (e) the findings of the Minister concerning a financial loss that the landlord has experienced or will experience in respect of the residential complex;
- (f) the findings of the Minister concerning a change in the services and facilities provided or in the standard of maintenance and repair in respect of the residential complex or any rental unit located therein;
- (g) in respect of a residential complex no part of which was occupied as a rental unit before the 1st day of January, 1976, the rate of return that is applicable to the residential complex in order to eliminate an economic loss;
- (h) the findings of the Minister concerning financing costs no longer borne by the landlord and which were allowed in a previous order determining rent increases under this Act or the *Residential Tenancies Act*, where the rate increase in financing costs that justified the rent increase awarded in the previ-

ous order took effect on or after the 1st day of August, 1985;

- (i) in respect of a residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, the extent to which the rent for the residential complex is a chronically depressed rent within the meaning of section 88; and
- the findings of the Minister concerning matters pre-(i) scribed.
- 73. Where the only grounds set out in a landlord's appli- Where cation under section 71 are the financing costs that the landlord has experienced or will experience in respect of the residential complex, the Minister shall apply the percentage determined under clause 68 (1) (a) or (b), whichever is applicable, instead of the prescribed operating cost allowances.

financing costs sole grounds for application

74.—(1) Where a landlord claims to have experienced a Proof of financial loss or an economic loss or where the landlord may operating costs be entitled to an allowance for relief of hardship, the landlord shall submit proof of the actual operating costs that the landlord has experienced in respect of the residential complex.

(2) Notwithstanding subsection (1), where, for the purposes of a prior order made under subsection 80 (1) or under subsection 131 (5) of the Residential Tenancies Act, the operating R.S.O. 1980, costs experienced in respect of the residential complex have been determined, and where the effective date of the first rent increase set out in that order is not more than three years prior to the effective date of the first rent increase applied for by the landlord in the current application, the landlord may elect not to submit proof of the operating costs that the landlord has experienced in respect of the residential complex.

Election by landlord

(3) Where the landlord makes an election under subsection Determi-(2), the operating costs shall be determined by reference to of operating the amounts determined for the purposes of the prior order costs where referred to in subsection (2), increased in the prescribed man-

75.—(1) In making findings concerning capital expendi- Allowance tures under clause 72 (b) or under clause 84 (1) (b), the Minister shall.

(a) allow interest on the expenditure, whether financed by borrowing or out of the landlord's own funds, or by a combination thereof, at the prescribed rates; and

1986

80 per cent reduction for capital expenditures previously allowed R.S.O. 1980, c. 452 (2) Where, in an application under section 71 or 83, the landlord claims a capital expenditure for the replacement of an item allowed as a capital expenditure in a previous order made under this Act or the *Residential Tenancies Act*, and where the capital expenditure allowed in the previous order was completed on or after the 1st day of August, 1985, the Minister shall reduce the total rent increase that would otherwise be justified in the application by 80 per cent of the amount allowed in respect of the capital expenditure in the previous order.

Limitation on consideration of financing costs **76.**—(1) In making findings concerning financing costs under clause 72 (b), the Minister shall consider increases in financing costs resulting from the landlord's purchase of the residential complex only to the extent necessary to prevent a financial loss by the landlord.

Relief of hardship

(2) When the total rent increase for the residential complex has been determined under section 72, the Minister shall, where he or she considers it necessary to relieve the landlord from hardship, allow the landlord additional revenue of not more than 2 per cent of the gross potential rent.

Limit on rent increase attributable to increased financing costs resulting from purchase of residential complex (3) Where a landlord claims a financial loss arising out of an increase in the financing costs of the residential complex resulting from a purchase or purchases of the residential complex, the Minister, when determining the total rent increase for the residential complex, shall allow in the initial year (as the component of the total increase in rent determined by the Minister that is attributable to such increase in financing costs) not more than 5 per cent of the total of the last lawful rents that were charged for the residential complex and in subsequent years the amount allowed in respect thereof by the Minister in any such year shall not exceed 5 per cent of the total of the last lawful rents that were charged for the residential complex.

Definition

(4) For the purposes of subsections (1), (3) and (6), "purchase" means the acquisition of a residential complex, after the 31st day of December, 1979, by any means whatsoever and includes the acquisition, whether by way of transfer, assignment or otherwise, of an interest, in whole or in part, in an option to purchase or in any agreement to purchase a residential complex.

(5) Where the Minister allows a financial loss arising out of Limitation the circumstances set out in subsections (1) and (3), the Minis-on relief hardship ter shall not allow the percentage set out in subsection (2) allowance except in the last year during which the financial loss is phased in, but then only where the total of the percentage attributable to the financial loss and the percentage set out in subsection (2) does not exceed 5 per cent.

(6) Subsections (3) and (5) do not apply to the purchase of Where a residental complex, no part of which was occupied as a do not apply rental unit before the 1st day of January, 1976, where.

- the purchase was from the original owner of the residential complex and the residential complex was constructed for the purpose of such a purchase; or
- (b) the building permit to construct the residential complex was issued on or before the 18th day of April. 1986, and the agreement to purchase was entered into on or before the 18th day of April, 1986.
- (7) In making findings concerning financial loss under Interest clause 72 (e), the Minister shall allow interest paid after the 1st day of August, 1985, on loans in respect of any financial loss incurred since the acquisition of the residential complex by the landlord, at the prescribed rates on the amount of the loan up to 85 per cent of the acquisition costs.

77.—(1) The rate of return in respect of a residential com-Rate of plex, no part of which was occupied as a rental unit before the 1st day of January, 1976, and the building permit for the construction of which is issued.

- (a) on or before the 1st day of January, 1987, is 10 per cent; or
- (b) after the 1st day of January, 1987, is the three-year moving average, as of the year in which the building permit is issued, of the 10 year Canada Bond rate plus 1 percentage point,

of the landlord's initial invested equity, including the principal portion of any debt not otherwise allowed, and capitalized losses.

(2) Where a landlord claims an economic loss in respect of Phase in a residential complex no part of which was occupied as a loss rental unit before the 1st day of January, 1976, the Minister shall allow in the initial and any subsequent year, as the amount attributable towards the elimination of economic loss.

- (a) in respect of a residential complex, the permit for the construction of which was issued on or before the 1st day of July, 1986, the greatest of,
 - (i) the amount required to eliminate the economic loss over a period of five years,
 - (ii) 5 per cent of the gross potential rent for the preceding year, and
 - (iii) the amount required to eliminate the financial loss experienced in the preceding year; and
- (b) in respect of a residential complex, the permit for which was issued after the 1st day of July, 1986, the lesser of,
 - (i) the total of the amount required to eliminate the economic loss, and
 - (ii) the portion of that amount that will result in a maximum rent increase that does not exceed the highest of,
 - (A) the amount required to eliminate the financial loss experienced in the preceding year,
 - (B) 10 per cent of the gross potential rent for the preceding year, and
 - (C) an amount that is three times the increase permitted under subsection 68 (1).

Extent of consideration of financing cost no longer borne

78. In making findings under clause 72 (h), the Minister shall consider a financing cost which is no longer borne only to the extent of the amount that was previously allowed in respect of that financing cost.

Apportionment of total rent increase

- **79.**—(1) In apportioning the total rent increase amongst the rental units in the residential complex, the Minister may take into account the following matters:
 - The rent schedule proposed by the landlord's application.
 - 2. Variations, and the reasons therefor, in the rents being charged by the landlord for similar rental units within the residential complex.

- 3. The degree to which any capital expenditures the landlord has experienced or will experience in respect of the residential complex affect individual rental units in the residential complex.
- Any other prescribed matter. 4.
- (2) In apportioning the total rent increase under subsection Equalization (1), the Minister may set the maximum rent that may be charged for a rental unit so that the landlord may achieve equalization of rents charged for similar rental units within the residential complex but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that rental unit in the twelve-month period immediately preceding the date of the rent increase.

of rents

80.—(1) Where the Minister has determined and apporting Order re tioned the total rent increase under this section,

maximum chargeable for each unit

- (a) the Minister shall order the maximum rent that may be charged for each rental unit in the residential complex that is under review and the earliest date that each may take effect; and
- (b) the Minister may order that the landlord or tenant pay to the other any sum of money that is owed to the other by reason of the order of the Minister setting the maximum rent for a rental unit.
- (2) Where a landlord has applied for a rent increase greater than the amount permitted by section 68, the Minister may, if increase his or her findings so justify, allow a rent increase of less than less than the amount permitted by section 68.

Minister may order statutory increase

(3) In any application under section 71, where the Minister finds that the rent being charged for any rental unit exceeds exceeds the maximum rent for that rental unit, the Minister shall apply maximum any rent increase that is otherwise justified, not to the rent currently being charged for the rental unit, but to the maximum rent for that rental unit.

Where rent

(4) Subject to subsection (5), the Minister shall make an order in respect of any application under this section not later than fifteen days before the effective date of the first rent increase applied for in the application.

Time for making order

(5) Where it is not possible in the circumstances for the Extension Minister to make an order in respect of any application within for making the time set out in subsection (4), the Minister shall notify in order

writing the parties to the application of the reason why it is not possible and of the date on or before which the order will be made.

Application by landlord for equalization of rents **81.**—(1) Without bringing an application under section 71, a landlord may make an application in the prescribed form to the Minister for an order apportioning the total rent charged in respect of a residential complex amongst the rental units situate therein, for the purpose of varying the rents so as to achieve equalization of rents charged for similar rental units within the residential complex.

Time for making application (2) An application under subsection (1) shall be made at least ninety days before the effective date of the first intended variation in rent as set out in the application.

Apportioning of rents charged to achieve equalization

(3) Where the Minister is satisfied in an application made under this section that the rents ought to be equalized, the Minister shall set the rent that may be charged for any rental unit so that the landlord may achieve equalization of the rents charged for similar rental units within the residential complex, but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that rental unit in the twelve-month period immediately preceding the date or dates of the rent increase.

Order re variation in rents to achieve equalization (4) Where the Minister has determined and apportioned the rent charged amongst the rental units in the residential complex, the Minister shall order the percentage, if any, by which the rent charged for a rental unit may be varied from the amount that would otherwise be the maximum rent for that rental unit and the date or dates on which such variation may take effect.

Application for adjustment to financial or economic loss allowed for 82.—(1) Within two years of the effective date of the first rent increase set out in an order made under subsection 80 (1), a landlord or a tenant may apply in the prescribed form to the Minister for an adjustment to the financial loss or economic loss allowed in the order or to the extraordinary operating costs allowed in the order in respect of maintenance, on the basis that the operating costs used in the calculation of the financial loss, economic loss or extraordinary operating costs were substantially higher or lower than the operating costs actually experienced in respect of the residential complex in a subsequent year.

Order re maximum rent chargeable for each unit (2) In an order made by the Minister on an application under subsection (1), the Minister shall order the maximum rent that may be charged for each rental unit in the residential

complex that is under review and the earliest date that each may take effect, provided that the earliest such date is not earlier than the day the application was made.

83.—(1) Where a landlord desires to increase the rent that may be charged for one or more rental units in a residential complex by more than the amount permitted by section 68 because of capital expenditures the landlord has experienced or will experience in respect of such rental units, the landlord and the tenants of such rental units may jointly apply in the prescribed form to the Minister at least sixty days before the effective date of the first intended rent increase for an order permitting the landlord to do so.

(2) Where the residential complex contains more than twelve rental units an application under subsection (1) shall not include the tenants of more than 25 per cent of the rental of rental units in the residential complex.

Application limited to 25 per cent

(3) The landlord and the tenants shall file with the Minister Filing of a capital cost revenue statement in the prescribed form together with all documents that the parties rely upon in sup-statement port of the application, including any written submissions, and such other materials as may be prescribed not later than fortyfive days before the effective date of the first rent increase applied for.

84.—(1) Where an application is made by a landlord and Determione or more tenants under section 83, the Minister shall by Minister determine the rent increase for each rental unit which is sub- of rent ject to the application that is justified by,

increase for each unit

- the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
- (b) the findings of the Minister concerning capital expenditures that the landlord has experienced or will experience that affect each rental unit;
- the prescribed allowances for management and administration in respect of capital expenditures: and
- (d) the findings of the Minister concerning matters prescribed.

Order re maximum rent chargeable for each unit

(2) Where the Minister has determined the rent increase for each rental unit under subsection (1), the Minister shall order the maximum rent that may be charged for each rental unit under review and the earliest date that each may take effect.

Application for conditional respecting rate of return

85.—(1) At any time before the first rental unit in a residential complex is rented, a landlord may make an application determination in the prescribed form to the Minister for an order determining the treatment any proposed course of action that may affect the rate of return for the residential complex will receive on a subsequent application under section 71, and the Minister shall, by order, make any determination the Minister considers appropriate.

Subsequent application required

(2) An order under subsection (1) is conditional on the landlord making a subsequent application in the prescribed form to the Minister to review the order in the light of the actual course of action taken by the landlord in relation to the matters determined.

Time for making subsequent application

(3) An application under subsection (2) shall be made not later than 120 days after the day the first rental unit is rented.

Variance or confirmation determination

(4) In an order made on an application under subsection of conditional (2), the Minister may vary or confirm the order made under subsection (1).

Effect of conditional determination

(5) A determination in an order made under subsection (1) has no force or effect except as varied or confirmed by an order made on an application under subsection (2).

Application order

86.—(1) Prior to making a capital expenditure in respect of a residential complex or any rental unit therein, the landlord may, or the landlord and the tenants of the rental units concerned jointly may, apply in the prescribed form to the Minister for a conditional order under subsection (2).

Order by Minister

(2) In an application under subsection (1), the Minister shall consider the proposed capital expenditure and shall by order declare the amount that will be allowed in respect of the expenditure in a subsequent application made under subsection 71 (1) (whole building review) or subsection 83 (1) (part building review), and where on the subsequent application the actual expenditure is substantially higher or lower than the projected expenditure the amounts allowed shall be decreased or increased proportionately.

Where rent increase awarded than applied for

87. An order of the Minister on an application made under this Part may award a rent increase greater than that requested in the application and where the order does so, the maximum rent for each rental unit affected by the order will be established in accordance with the terms of the order, but the rent charged for any such rental unit during the twelvemonth period following the effective date of the rent increase set out in the order shall not exceed the amount that would have been established for that rental unit had the rent increase requested in the application been awarded.

88.—(1) In this section, "chronically depressed rent" Definition means the gross potential rent for a residential complex where.

- (a) the rent is more than 20 per cent below the gross potential rent for residential complexes that are comparable to the residential complex, in terms of number and type of rental units, quality and location; and
- (b) the rate of return on the landlord's equity in respect of the residential complex is less than 10 per cent.
- (2) In an application made under section 71 in respect of a Allowance re residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, where the landlord rent has owned the residential complex throughout the period from the 1st day of November, 1982, to the day the application is made, and the Minister finds the gross potential rent is a chronically depressed rent, the Minister shall allow, in an order made under subsection 80 (1), an additional 2 per cent per year of the gross potential rent until the rent is no longer a chronically depressed rent.

chronically depressed

(3) Where a rental unit in a residential complex whose Where new gross potential rent is found to be a chronically depressed rent under subsection (2) becomes occupied by a new tenant or where an existing tenant of the rental unit agrees in writing thereto, the landlord, with the approval of the Minister and without making an application under section 71 but subject to section 67, may increase the rent charged for that rental unit to the amount the rent would be for that rental unit at the time the gross potential rent for the residential complex has reached the level at which it is no longer a chronically depressed rent.

tenant or

(4) Where on the application of a tenant or on the Minister's own motion the Minister finds a significant deterioration in the standard of maintenance and repair in respect of the maintenance rental unit or the residential complex in which it is situate has occurred after the date of the order mentioned in subsection

Deterioration in standard and repair

(2), the Minister may order the allowance or any part thereof for an additional 2 per cent or the increase in rent charged for a rental unit to which subsection (3) applies, be no longer collected by the landlord.

Phasing in of certain amounts that are components of total rent increase

- **89.**—(1) An order made under this Part may provide for the phasing in over more than one year, in the prescribed manner, of any amount that is included (as a component of the total permitted rent increase) for the purpose of,
 - (a) eliminating a financial loss or an economic loss the landlord has experienced or will experience;
 - (b) achieving equalization of rents charged for rental units within a residential complex; or
 - (c) raising the gross potential rent for a residential complex to the level where the rent is no longer a chronically depressed rent within the meaning of section 88,

and where provision is made for such phasing in, the Minister shall specify in the order the phased in amount for the initial year and the method of calculating the amount for any subsequent year or years in which the phased in amount is applicable.

Notice by Minister to landlord and entry in rent registry (2) The Minister shall calculate the phased in amount that is applicable in any year subsequent to the initial year and, not later than 120 days before the anniversary of the date of the first rent increase set out in the order, shall give notice in writing of the amount to the landlord who is affected and shall enter the phased in amount that is applicable for the year in the information recorded in the rent registry in respect of any rental unit that is affected thereby.

Notice to

(3) The landlord shall include with a notice of rent increase given under section 5 any notice the landlord has received under subsection (2) that affects the amount of the rent increase set out in the notice given under section 5.

Increasing rent by phased in amount (4) In addition to the amount by which, under section 68, the landlord could increase the rent charged, the landlord may, without making an application under this Act, increase the rent for a rental unit by the phased in amount set out in the notice given under subsection (2) respecting that rental unit.

Decrease in financing costs
R.S.O. 1980, c. 452

90.—(1) Where a landlord has been awarded a rent increase under this Act or the *Residential Tenancies Act* that

was justified, in whole or in part, by a rate increase in financing costs that took effect on or after the 1st day of August. 1985, if at the time the term of the mortgage or other instrument associated with the financing costs expires or is about to expire the Minister is of the opinion that the rate of interest required to be paid on a renewal or replacement of the mortgage or other instrument is lower by 2 per cent or more than the interest rate that justified the rent increase that was awarded, the Minister shall give notice thereof in writing to the landlord and the tenants of the residential complex that is affected.

(2) Not later than thirty days after the receipt of a notice under subsection (1), the landlord shall file with the Minister documents all documents that are relevant to the financing costs that the with Minister landlord will experience following the expiry of the term of the mortgage or other instrument.

Landlord to

(3) Unless the landlord makes an application under section 71 within the time set out therein, the Minister may, on the Minister's own motion, order the maximum rent that may be charged for each rental unit in the residential complex and the earliest date that each may take effect.

Order of the Minister

(4) In making an order under subsection (3) the Minister shall take into account only the matters in respect of which the Minister may make findings under clause 72 (h).

Matters to be considered by the Minister

91.—(1) A tenant who desires to dispute an intended rent increase for his or her rental unit that does not exceed the disputing amount that the landlord is permitted to charge under section intended 68 may make an application to the Minister for an order requiring the landlord to reduce the amount of the rent increase.

Application by tenant rent increase

(2) No rent increase shall be reduced under this section Exception when the rent increase results in a rent not exceeding the maximum permitted by an order by the Minister or the Board or by the Residential Tenancy Commission under the Residen- R.S.O. 1980, tial Tenancies Act, for the applicable rental unit.

(3) An application under this section shall be made not later than sixty days before the effective date of the intended rent increase.

Time for application

(4) Where an application is made by a tenant under this sec- Considertion, in determining a rent increase for the rental unit, the Minister shall consider only the following matters:

applies

- 1. Variations and the reasons therefor in the rent being charged by the landlord for similar rental units within the residential complex.
- A change shown to have occurred in the standard of maintenance and repair or in the services and facilities provided that affects the rental unit.
- The degree to which the rental unit complies with the maintenance standards established by the Residential Rental Standards Board.

Order setting maximum rent chargeable for the unit

- (5) Where the Minister has made a determination on the application,
 - (a) the Minister shall make an order setting the maximum rent that may be charged for the rental unit under review and the earliest date that the maximum rent may take effect; and
 - (b) the Minister may order the landlord or tenant to pay to the other any sum of money that is owed to the other by reason of the decision of the Minister setting the maximum rent for the rental unit.

Application by landlord for equalization of rents

(6) Where a tenant makes an application under subsection (1) on the grounds set out in paragraph 1 of subsection (4), the landlord may, not later than thirty days from the day the tenant's application was filed, make an application to the Minister under subsection 81 (1).

First date of intended variation (7) Notwithstanding subsection 81 (2), the first date of intended variation in rent in a landlord application under subsection 81 (1) as provided in subsection (6) shall be the effective date of the rent increase disputed by the tenant in the application under subsection (1).

Tenant not liable to pay illegal rent increase **92.**—(1) No tenant is liable to pay any rent increase in excess of that permitted to be charged under this Act.

Remedy

(2) Where, on the application of a tenant, the Minister determines that the landlord has charged an amount of rent that is in excess of that permitted by this Act or Part XI of the Residential Tenancies Act or by The Residential Premises Rent Review Act, 1975 (2nd Session), the Minister,

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

(a) shall by order declare the maximum rent that may be charged for the rental unit concerned and the earliest date the maximum rent may take effect; and

- (b) where any excess rent paid by the tenant to the landlord is owed by the landlord to the tenant, shall, subject to subsection 13 (4), order the landlord to pay the excess rent owing to the tenant.
- (3) Notwithstanding subsection (2), the Minister shall not Where excess make an order for the payment of excess rent charged for a rental unit prior to the 1st day of August, 1985, where the sum of the excess rent and the lawful rent for the rental unit does not exceed the rent that could have been charged for the rental unit in the period when the excess rent was paid, if, to the amount charged for the rental unit on the 29th day of July, 1975, or at the earliest time thereafter for which the rent charged is known, is added all increases permitted under The Residential Premises Rent Review Act, 1975 (2nd Session) and the Residential Tenancies Act.

rent not to be repaid

1975 (2nd Sess.), c. 12 R.S.O. 1980, c. 452

93. Where a landlord makes an application under section 71, 83 or 86, the Minister may refuse to recognize all or part of the capital expenditures or proposed capital expenditures claimed by the landlord where in the opinion of the Minister such expenditures became necessary as a result of the landlord's ongoing deliberate neglect in maintaining the residential complex or any rental unit therein.

Consequences of neglect in maintaining residential complex or rental unit

94.—(1) In this section,

Definitions

- "basic unit rent" means the amount of rent charged for a rental unit exclusive of any separate charges;
- "separate charges" means the amounts of rent charged separately for any service, facility, privilege, accommodation or thing that the landlord provides for the tenant in respect of the tenant's occupancy of the rental unit.
- (2) In any order under this Act in which the Minister sets out or declares the maximum rent that may be charged for a rental unit, the Minister may separately set out or declare the maximum basic unit rent and the maximum separate charges.

Minister may set out or declare basic unit rent and separate charges

(3) Notwithstanding subsection 79 (2) or 81 (3), an order of the Minister made under subsection 80 (1) or 81 (4) may provide for the immediate equalization of separate charges for charges parking places or other separate charges as may be prescribed.

Immediate equalization

(4) Notwithstanding anything in this Act, where a landlord and tenant agree that the landlord will provide any additional, or discontinue the provision of any, parking spaces, or any other service, facility, privilege, accommodation or thing as

Adding or discontinuing facilities, etc. may be prescribed, in respect of the tenant's occupancy of a rental unit, the maximum rent which may be charged for the rental unit shall be increased or decreased in the prescribed manner.

Coerced agreement not enforceable (5) Where the Minister by order under subsection 13 (3) determines that a tenant has entered into an agreement referred to in subsection (4) as a result of some form of coercion exercised by the landlord, the agreement is not enforceable against the tenant.

Where vacant unit becomes rented 95. Where a rental unit that was previously rented has not been rented for any period of time and then becomes rented, the maximum rent shall be the amount the landlord would have been entitled to charge if the unit had been rented during that period and the landlord had given notice or notices of rent increase in the amount permitted by this Act.

Where rental unit rented for first time **96.** Where a rental unit is rented for the first time, the rent charged by the landlord shall be deemed to be the maximum rent for that unit except as otherwise provided in this Act or the regulations thereunder.

Additional charges prohibited

97.—(1) No landlord, or any person acting on behalf of the landlord shall, directly or indirectly, in respect of any rental unit,

- (a) collect or attempt to collect from a tenant or prospective tenant of the rental unit a premium, commission, bonus, penalty or key deposit;
- (b) require or attempt to require a prospective tenant to pay any consideration for goods or services as a condition for granting the tenancy, in addition to the rent the tenant is lawfully required to pay to the landlord; or
- (c) rent any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent the landlord lawfully may charge for the rental unit.

Idem

- (2) No tenant shall,
 - (a) sublet a rental unit for a rent that is greater than the rent that is lawfully charged by the landlord for the rental unit;

- (b) sublet any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent that is lawfully charged by the landlord for the rental unit.
- charge any consideration, fee, premium, commission, bonus, penalty or key deposit for subletting the rental unit or any portion thereof or for assigning a tenancy agreement for the rental unit; or
- (d) require or attempt to require a prospective subtenant or assignee to pay any consideration for goods or services as a condition for the sublet or assignment in addition to the rent the subtenant or assignee is lawfully required to pay to the tenant or landlord

PART VII

APPEALS

98.—(1) A landlord or a tenant directly affected by an Appeal from order may, within thirty days of the giving of the order of the order of the Minister Minister, appeal any order of the Minister disposing of an application made under this Act, or an order made on the Minister's own motion, by filing a notice or notices of appeal in the prescribed form with the Board, together with any documents that the party appealing relies upon in support of the appeal and which were not filed with the Minister on the application.

(2) The landlord and any tenant of a rental unit affected by Appeal of an order made under section 84 or an order made pursuant to part building review order a joint application under section 86 may appeal the order jointly or individually.

(3) Where a notice of appeal is filed with the Board under Record subsection (1), a copy of the notice shall be given by the Board to the Minister who shall thereupon forward to the Board.

- (a) the original or a true copy of the application;
- (b) the original or a true copy of all documents and material filed in respect of the application; and
- (c) a certified copy of the order appealed from together with the summary of reasons for the order.

Filing of documents, etc., by respondent

(4) Where any person has filed a notice of appeal, the other parties to the appeal shall, within thirty days of the filing of the notice of appeal, file with the Board the documents that the parties intend to rely upon at the hearing of the appeal and which were not filed with the Minister on the application.

Notice to parties

(5) After receiving a notice of appeal under subsection (1), the Board shall give a notice to the parties stating the date, place and time when the appeal will be heard.

Issues may be heard together (6) Where several different appeals have been made to the Board, and the Board is of the opinion that it would be appropriate to determine the issues raised by the appeals together, the Board may hear and determine the issues in dispute at a common hearing.

Issues may be heard separately (7) Where the Board is of the opinion that it would be appropriate to deal with some of the issues raised by an appeal at separate hearings, the Board may direct that some of the issues be dealt with separately and may set additional hearing dates for the determination of those issues.

Issues on appeal limited **99.**—(1) On the hearing of an appeal, the issues will be limited to those raised in the initial application, unless the Board, in accordance with the prescribed procedural and interpretative rules and policies, otherwise allows.

Agreement to further limited issues (2) Where all the parties to an appeal agree in writing, the Board may further limit the issues of the appeal to those issues agreed upon by the parties.

Evidence

(3) On the hearing of the appeal, the Board shall hear any evidence that is relevant to the issues, whether or not the evidence was tendered or was available on the initial application.

Burden of proof

(4) On the hearing of the appeal, the burden of proof lies on the party who made the initial application, or in the case of an appeal from an order made on the Minister's own motion, on the party bringing the appeal.

Hearing by single member **100.**—(1) Subject to subsection (2), an appeal shall be heard by a single member of the Board.

Hearing by panel of three Board members (2) The chairman shall assign a panel of three members of the Board to hear an appeal where any party to the appeal files a request in the prescribed form with the Board not later than thirty days after the day the notice of appeal is filed.

Pre-hearing conference

101.—(1) Where any party to an appeal files a request therefor in the prescribed form with the Board or where the

Board on its own initiative decides to do so, the Board may direct the parties to attend a pre-hearing conference, to be conducted by a single member of the Board, to discuss,

- the issues to be dealt with on the hearing of the appeal;
- (b) whether any person ought to be added or removed as a party to the appeal;
- (c) the rental units affected by the appeal;
- (d) where a request has been filed under subsection 100 (2), whether the appeal should be heard by one member or a panel of three members of the Board; and
- (e) any procedural matter that arises or may arise in connection with the appeal.
- (2) The member of the Board who conducts the conference Recommenmay make such recommendations as he or she considers necessary or advisable arising out of the matters discussed at the conference.

dations

(3) The member of the Board who conducts the pre-hearing conference shall not hear the appeal or be a member of the to panel that hears the appeal.

member not hear appeal

- (4) Notwithstanding subsection 102 (1), the Statutory R.S.O. 1980, Powers Procedure Act does not apply to a pre-hearing conferto apply ence held under this section.
- 102.—(1) The Statutory Powers Procedure Act applies to Application proceedings by the Board in the exercise of a statutory power R.S.O. 1980, of decision. c. 484
- (2) The giving to a party of a copy of a notice of appeal to the Board shall be deemed to be compliance with section 8 of the Statutory Powers Procedure Act.

Deemed compliance

R.S.O. 1980,

103. Subject to the provisions of the Statutory Powers Procedure Procedure Act, and except as otherwise provided for by this Act, the Board may determine its own procedure for the conduct of hearings.

104.—(1) In addition to any material, evidence or inform- Matters ation submitted to the Board on an appeal, in hearing any to consider appeal, the Board may consider.

- (a) any matter the Minister was entitled to consider on the application;
- (b) any material and documents submitted to the Minister on the application; and
- (c) such other matters as it deems necessary or advisable for the purpose of dealing with the appeal.

Board may investigate, etc.

- (2) The Board, in respect of any appeal, may,
 - (a) conduct any enquiry or inspection of documents or premises that the Board considers necessary; and
 - (b) question any person by telephone or otherwise.

Additional material **105.**—(1) The Board may direct any party to the appeal to file such additional material as the Board considers necessary and the other parties shall have an opportunity to examine the additional material and to explain or refute it.

Where additional material not filed

- (2) Where any party to the appeal fails to comply with a direction of the Board under subsection (1), the Board may,
 - (a) in the case of the appellant, refuse to make an order allowing the appeal or that part of the appeal relating to the failure to comply with the direction; and
 - (b) in the case of any other party to the appeal, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.

Board may question parties, etc.

106. At the hearing, the Board may question the parties who are in attendance and any witnesses with a view to determining the truth concerning the matters in dispute.

Other relevant information

107. In making its determination, the Board may consider any relevant information obtained by the Board in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

Order of Board

- **108.** Upon completion of a hearing, the Board shall by order,
 - (a) affirm the order of the Minister;
 - (b) vary the order of the Minister; or

substitute its own order for the order of the Minister.

and shall forthwith give a copy of the order to the parties to the appeal, together with reasons in writing for the order.

109. Where, within one year of the date of an order of the Power to Board, the Board is of the opinion that there has been a serious error, the Board may, on its own motion, rehear any appeal and may affirm, rescind, amend or replace the order.

rehear

110. An order of a Board member or an order of the Order of majority of the members of a panel of Board members shall be deemed to be an order of the Board

member or majority of panel deemed order of Board

111. Where a member of a panel of Board members that is Decision by assigned to hear an appeal ceases for any reason to be a member of the Board before the Board has made an order in panel of respect of the appeal, the remaining two members of the members panel may complete the hearing and make the order of the Board, but if the two members do not agree on the order to be made, the appeal shall be reheard before a new panel of Board members.

remaining members of

112.—(1) Any party to an appeal under section 98 may, Appeal to on a question of law, appeal an order of the Board to the Court Divisional Court.

(2) The Board is entitled to be heard by counsel or other-Board wise upon the argument on any issue in an appeal under this section.

entitled to be heard on

(3) Where an appeal is brought under subsection (1), the Divisional Court shall hear and determine the appeal and may,

Power of Court on appeal

- (a) affirm, rescind, amend or replace the decision or order; or
- (b) remit the matter to the Board with the opinion of the Divisional Court.

and may make,

(c) any other order in relation to the matter that it considers proper; and

(d) any order, with respect to costs, that it considers proper.

Orders not stayed pending appeal

113. An appeal from an order of the Minister or the Board does not stay the order pending the hearing of the appeal.

PART VIII

MISCELLANEOUS

Regulations

114. The Lieutenant Governor in Council may make regulations.

- 1. prescribing forms of applications to the Minister and material to be furnished in respect of the application;
- 2. prescribing the form of a notice of appeal to the Board;
- 3. prescribing procedural and interpretative rules and policies to be observed in the interpretation and administration of this Act;
- 4. prescribing, for the purposes of clause 4 (2) (a), rental units to which this Act applies;
- 5. prescribing, for the purposes of section 5, the form of the notice of a rent increase;
- 6. prescribing, for the purposes of clause 13 (3) (d), matters of concern in respect of which the Minister may make a determination;
- 7. prescribing, for the purposes of section 15, the manner in which maintenance standards shall be enforced by a municipality;
- 8. prescribing, for the purposes of subsection 20 (5), rules for the computation of time;
- 9. prescribing, the form of the notice mentioned in subsection 27 (1);
- 10. prescribing, for the purposes of subsection 32 (2), the form of a summary of reasons for an order of the Minister;

- 11. prescribing, for the purposes of section 51, fees for the furnishing of copies of forms, notices or documents;
- 12. prescribing, for the purposes of subsection 52 (2), the manner of converting to an equivalent monthly rent;
- 13. prescribing, for the purposes of subsection 54 (2), the form of a request for information from the rent registry;
- 14. prescribing, for the purposes of subsection 54 (3), fees for the furnishing of information from the rent registry;
- 15. prescribing, for the purposes of subsection 55 (1), the form of the statement to be filed in connection with the rent registry;
- 16. prescribing, for the purposes of clause 55 (2) (a), the date for filing a statement under subsection 55 (1);
- 17. prescribing, for the purposes of subsection 56 (1), other information to be set out in the statement filed under subsection 55 (1);
- 18. prescribing the percentage mentioned in subsections 57 (2) and (3);
- 19. prescribing, for the purposes of section 58, the form of notice to be given by the Minister in respect of information recorded in the rent registry;
- 20. prescribing, for the purposes of subsection 71 (4), the form of a cost revenue statement;
- 21. prescribing, for the purposes of clause 72 (a) and 84 (1) (a), the operating cost allowance;
- 22. prescribing, for the purposes of clause 72 (d) and clause 84 (1) (c), the allowances for management and administration in respect of capital expenditures;
- 23. prescribing, for the purposes of clause 72 (j), matters in respect of which the Minister may make findings;

- 24. prescribing, for the purposes of clause 75 (1) (a), interest rates on capital expenditures;
- 25. prescribing, for the purposes of subsection 76 (7), interest rates to be allowed;
- 26. prescribing, for the purposes of paragraph 4 of subsection 79 (1), matters to be taken into account by the Minister;
- 27. prescribing, for the purposes of subsection 83 (3), the form of a capital cost revenue statement;
- 28. prescribing, for the purposes of section 89, the manner of phasing in amounts;
- 29. prescribing, for the purposes of subsection 94 (3), separate charges which may be equalized immediately;
- prescribing, for the purposes of subsection 94 (4), the manner in which the rent may be increased or decreased;
- 31. prescribing, for the purposes of section 96, the maximum rent for a rental unit that is rented for the first time;
- 32. prescribing, for the purposes of subsection 117 (1), the allowed amount of a contingency fee;
- 33. prescribing, for the purposes of constructing the Building Operating Cost Index, the Table setting out the weighting and components thereof;
- 34. defining any word or expression used in this Act that has not already been expressly defined in this Act;
- 35. prescribing anything that by this Act is to be or may be prescribed.
- 115. Substantial compliance with the requirements of this Act respecting the contents of forms, notices or documents is sufficient unless the Minister or the Board, as the case may be, is of the opinion that it would result in unfairness to any person.

Substantial compliance with forms, etc.. sufficient

116. Any person may, without let or hindrance, organize Right to or participate in an association the purpose of which is to secure and enforce the rights established by this Act.

organize or participate in association

117.—(1) No agent who represents a landlord or a tenant Contingency in any proceedings under this Act or who assists a landlord or tenant in any matter arising under this Act shall charge or take a fee based on a proportion of any amount which has been or may be recovered, gained or saved in part or in whole through the efforts of the agent, where the proportion exceeds the prescribed amount.

fee limited

(2) Any agreement which provides for a fee mentioned in Contingency subsection (1) is void.

agreement

118.—(1) Any person who knowingly,

Offences

- (a) fails to obey an order of the Minister or the Board;
- (b) furnishes false or misleading information in any application, document, written representation or statement to the Minister under this Act or in any proceedings before the Board:
- increases the rent charged for a rental unit where less than twelve months has elapsed since the date of the last rent increase:
- increases the rent charged for a rental unit by more than the amount referred to in section 68 unless authorized by the Minister or the Board to do so;
- charges a higher rent for a rental unit than that permitted under an order of the Minister or the Board:
- (f) charges an amount that is in contravention of section 97; or
- fails to file with the Minister the statement required under section 55, in respect of the rent registry,

and every director or officer of a corporation who knowingly concurs in the prohibited act is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

(2) Where a corporation is convicted of an offence under Where subsection (1), the maximum penalty that may be imposed convicted upon the corporation is \$25,000 and not as provided in subsection (1).

Limitation

(3) Proceedings shall not be commenced, in respect of an offence under subsection (1), after one year after the date on which the offence was, or is alleged to have been, committed.

Monetary sums rounded to nearest dollar **119.** Wherever under this Act a sum of money is required or permitted to be set out or expressed, the sum may be rounded to the nearest dollar and set out or expressed accordingly.

Proof of documents, etc.

120. In any prosecution for an offence under this Act, the production of any certificate, statement or document given to the Minister or to the Board under this Act or the regulations thereunder, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by such person or on such person's behalf, shall be received as *prima facie* proof that such certificate, statement or document was filed or delivered by or on behalf of that person or was made or signed by that person or on that person's behalf.

Moneys

- **121.** The moneys required for administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature.
- **122.** Clauses 134 (1) (c) and (d) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, are repealed.

Repeals

123. The following are repealed:

- 1. Residential Complexes Financing Costs Restraint Act, 1982, being chapter 59.
- 2. Residential Complexes Financing Costs Restraint Amendment Act, 1983, being chapter 69.
- 3. Residential Complexes Financing Costs Restraint Amendment Act, 1984, being chapter 65.
- 4. Residential Tenancies Amendment Act, 1985, being chapter 15.
- 5. Sections 60, 61, 70 to 73, 75 to 110, 114, 115, 117, 118, 120 to 133, clauses 134 (1) (a), (b), (f) and (g), subsections 134 (2) and (3) and subsection 135 (2) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980.

124.—(1) Despite the repeal of the provisions mentioned Certain in section 123, those provisions shall be deemed to be continued in force for the purposes only of continuing and finally continued disposing of the following matters:

in force for purposes

- An application made under the Residential Tenan-1. cies Act before the day this section comes into force.
- 2. An appeal of an order made under the Residential Tenancies Act.
- A court proceeding commenced before the day this 3. section comes into force to which the Residential Tenancy Commission is a party.
- (2) An application under the Residential Tenancies Act Election to made before the day this section comes into force may, at any time before the hearing of the application has commenced, at this Act the written election of the applicant, be continued and finally R.S.O. 1980, disposed of as an application made under the corresponding provisions of this Act.

(3) For the purposes only of subsection (1), the Residential Residential Tenancy Commission shall continue and has all the powers Commission and jurisdiction conferred on it by the Residential Tenancies continued Act, and for that purpose all appointments of Commissioners purposes and Appeal Commissioners and designations of Commissioners as members of the Board of Commissioners are confirmed and continued until the expiration of the term of appointment or a day to be named by proclamation of the Lieutenant Governor, whichever is earlier.

for certain

(4) Despite subsection 117 (7) of the Residential Tenancies Act, an appeal from an order made under subsection 129 (2) of that Act may be heard before a single Appeal Commissioner, who need not be a member of the Board of Commissioners.

Where appeal may be heard before single Appeal Commissioner

125.—(1) This Act, except subsection 68 (1) and section 122, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-

- (2) Subsection 68 (1) and section 122 shall be deemed to Idem have come into force on the 1st day of August, 1985.
- 126. The short title of this Act is the Residential Rent Short title Regulation Act, 1986.

SCHEDULE A

(Clause 68 (1) (b))

The formula for calculating the Residential Complex Cost Index for the purposes of clause 68 (1) (b) is the greater of,

- (a) 2 per cent; or
- (b) 2 per cent plus 2/3 of the percentage increase in the three-year moving average of the Building Operating Cost Index, rounded to the nearest 1/10th of 1 per cent.

The Building Operating Cost Index shall be constructed in accordance with the weighting and components set out in the prescribed Table, with the weighting adjusted annually in relation to changes, based on a three-year moving average, in the components.

SCHEDULE B

(Clauses 72 (a) and 84 (1) (a))

The formula for calculating the operating cost allowance for the purposes of clauses 72 (a) and 84 (1) (a) is,

Operating Cost Allowance = Residential Complex Cost Index less 1 percentage point X the gross potential rent for the residential complex for the month immediately preceding the effective date of the first rent increase applied for X 12.

35 ELIZABETH II, 1986

Bill51

An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

The Hon. A. Curling

Minister of Housing



1st Reading June 5th, 1986 2nd Reading July 7th, 1986 3rd Reading

Royal Assent

(Reprinted as amended by the Resources Development Committee)

EXPLANATORY NOTES

The Bill replaces Bill 78, introduced and given first reading at the last Session of the Legislature and subsequently withdrawn, and incorporates in large measure the recommendations made to the Minister of Housing by the Rent Review Advisory Committee in its report submitted to the Minister on the 18th day of April, 1986.

The Bill replaces the provisions of the *Residential Tenancies Act* that govern rent review matters with a new Act, to be called the *Residential Rent Regulation Act*, 1986. Among the principal features of the new Act proposed by the Bill are the following:

- 1. The percentage amount by which a landlord may increase the rent chargeable for a rental unit without applying for an order permitting the landlord to do so is set at 4 per cent in respect of rent increases that take effect on or after the 1st day of August, 1985, and before the 1st day of January, 1987; in respect of rent increases that take effect on or after the 1st day of January, 1987, and on or after the 1st day of January in subsequent years, the percentage will be that set out in the Residential Complex Cost Index as published annually by the Minister. The Index is calculated in accordance with the formula set out in Schedule A to the Bill.
- 2. Two categories of rental units that are exempt from rent review under the *Residential Tenancies Act* are, under the Bill, made subject to rent regulation effective the 1st day of August, 1985. These are,
 - i. a rental unit situate in a building, no part of which was occupied as a rental unit before the 1st day of January, 1976, and
 - ii. a rental unit that is a mobile home or mobile home site that was not occupied as a rental unit before the 1st day of January, 1976.
- 3. A landlord who desires to increase the rent charged for a rental unit by more than the relevant percentage is required to apply, in the first instance, to the Minister of Housing for an order permitting the landlord to do so. The authority to consider such an application and make an order may be delegated by the Minister to named officials of the Ministry of Housing. Procedures are set out in the Bill to be followed where such an application is made.
- 4. A board to be known as the Rent Review Hearings Board is established to which a landlord or a tenant may appeal from an order made on the initial application. A further appeal lies on a question of law from an order of that Board to the Divisional Court. No filling fees are required in respect of an appeal to the Board nor, in the case of a tenant appeal, is there a requirement that any number or proportion of tenants bring the appeal. Provision is made for the holding of a pre-hearing conference to discuss matters relevant to the conduct of an appeal to the Board.
- 5. Provision is made for the establishment of a rent registry that will initially compile information on the rent charged and other relevant matters in respect of residential complexes containing more than six rental units; residential complexes that contain six or fewer rental units will be brought into the registry at a later date to be prescribed, although a landlord of such a residential complex may voluntarily file the information in respect of that complex at any earlier time. Landlords will be required to file the actual rent being charged for a rental unit on the 1st day of July, 1985, or if a rental unit is not rented on that date, the rent charged when it is first rented. Tenants may dispute within a specified time period the amount of the actual rent as recorded in the rent registry; otherwise the rent recorded is deemed to be the lawful rent. Landlords who register within the time specified for doing so will not be liable to an order requiring a rebate of any excess rent that may have been collected prior to August 1st, 1985; those who do not will remain liable to an order requiring

a rebate of any excess rent collected during the six year period preceding the date of any application for rebate. After a date that is six months from the day this Act comes into force no application under the Act made by a landlord who has not registered will be proceeded with whether the time for doing so has expired or not. Provision is made for the Minister to investigate on his or her own initiative the level of the rent charged for a rental unit to determine if the rent is a lawful rent.

- 6. Where an order has been made under the *Residential Tenancies Act*, or is made under the new Act proposed by the Bill, for a rent increase because of an increase in financing costs that took effect on or after August 1st, 1985, at the time those increased costs are no longer borne by the landlord the Minister may determine the amount of rent increase that is no longer justified and order that the rent be not increased for the period of time set out in the order.
- 7. The interim restraint on the pass-through of increased financing costs resulting from the purchase of a residential complex, contained in the *Residential Complexes Financing Costs Restraint Act*, 1982, is placed on a permanent footing. The suspension of the 2 per cent relief of hardship provision contained in that Act is, however, lifted. Restored also is the provision permitting equalization of rents for similar rental units, under certain conditions, which had been suspended under the operation of that Act.
- 8. The allowance for a landlord's increased operating costs will be calculated in accordance with the formula set out in Schedule B to the Act.
- 9. In respect of pre-1976 residential complexes whose rent is "chronically depressed", as defined, provision is made for an allowance to be phased in to bring the rents to a level where they are no longer depressed. The Minister is empowered to grant financial relief to a tenant who meets certain criteria and who is required to pay the allowance.
- 10. In respect of post-1975 residential complexes whose landlords are experiencing an "economic loss", as defined, provision is made for an allowance to be phased in to bring the rents to a level where the landlord no longer experiences an economic loss.
- 11. A landlord and one or more tenants may jointly apply to determine the rent increase that will be permitted because of capital expenditures incurred or to be incurred that will affect some but not all of the rental units in a residential complex.
- 12. Without bringing an application to increase rents, a landlord may apply for an order permitting equalization over a period of time of the rents charged for similar rental units within a residential complex; a limit is set on the amount of rent increase attributable to equalization that may be charged for any rental unit.
- 13. A Residential Rental Standards Board is established and given a broad range of powers in respect of the development and enforcement of appropriate maintenance standards applicable to residential complexes and the rental units located therein.
- 14. The extraction of additional charges (sometimes referred to as key money) as a condition to renting or subletting any rental unit is made an offence under the Act.
- 15. The Lieutenant Governor in Council is empowered to prescribe by regulation procedural and interpretative rules and policies and these will be binding on the Minister or the Minister's delegates and on the Board in the interpretation

- and administration of the Act; additional extensive regulation-making powers are conferred on the Lieutenant Governor in Council to prescribe in detail the manner in which applications under the Act will be dealt with.
- 16. The Bill contains an expanded offences provision; it will, for example, be an offence for a landlord to charge a rent that is in excess of that permitted under the Act or to fail to file the information required for the purposes of the rent registry.
- 17. Provisions are included in the Bill that set out the consequences, and the procedures to be followed, where a landlord has increased the rent charged for a previously exempt rental unit to take effect on or after the 1st day of August, 1985, by more than the amount of increase permitted without making an application therefor.
- 18. Provision is made for the licensing of persons who wish to practise as residential tenancy consultants in respect of any proceedings brought under the Act.

Bill 51 1986

An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"Board" means the Rent Review Hearings Board established under this Act;

"economic loss" means the loss experienced by a landlord whose rate of return on the landlord's invested equity and capitalized losses in respect of a residential complex is less than the rate of return made applicable to that residential complex by subsection 80 (1), but does not include a financial loss;

"extraordinary operating cost" means a change in the cost of one item in the Building Operating Cost Index that the landlord has experienced or will experience,

- (a) that creates a variance of at least 50 per cent from the Building Operating Cost Index component, or
- (b) that would justify a variance in revenue of at least 1 per cent from the amount resulting from application of the Building Operating Cost Index component;
- "financial loss" means the loss experienced by a landlord whose total costs that have been or will be experienced and that are allowed in an application made under this Act in respect of a residential complex for an annual accounting period exceed the revenue for the same period;
- "landlord" includes the owner, or other person permitting occupancy of a rental unit, and his or her heirs, assigns, personal representatives and successors in title and a per-

son, other than a tenant occupying the rental unit, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

"mail" means first-class, registered or certified mail;

"maximum rent" means the lawful maximum rent which could be charged for a rental unit had all permissible statutory or other increases which could have been taken on or after the 1st day of August, 1985, been taken;

"Minister" means the Minister of Housing or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

"Ministry" means the ministry of the Minister;

"mobile home" means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed;

"mobile home park" means the rental units, and the land, structures, services and facilities of which the landlord retains possession and that are intended for the common use and enjoyment of the tenants of the landlord, where two or more occupied mobile homes are located for a period of sixty days or more;

R.S.O. 1980, c. 91

- "non-profit co-operative housing corporation" means a corporation incorporated without share capital under the Co-operative Corporations Act or any predecessor thereof or under similar legislation of Canada or any province, the main purpose and activity of which is the provision of housing for its members, and the charter or by-laws of which provide that,
 - (a) its activities shall be carried on without the purpose of gain for its members,
 - (b) on dissolution, its property after payment of its debts and liabilities shall be distributed to nonprofit or charitable organizations,
 - (c) housing charges, other charges similar to rent, or any other charges payable by members are decided by a vote of the members or of a body duly elected

or appointed by the members, or a committee thereof,

- (d) termination of occupancy rights may be brought about only by a vote of the members or of a body duly elected or appointed by the members, or a committee thereof, and that the member whose occupancy rights are terminated has a right to appear and make representations prior to such vote;
- "prescribed" means prescribed by the regulations made under this Act;
- "rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental unit, whether or not a separate charge is made for such services and facilities, privilege, accommodation or thing but does not include,
 - (a) any amount required by the *Retail Sales Tax Act* to R.S.O. 1980, be collected from a tenant by a landlord, or
 - (b) any amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord to a municipality in respect of a mobile home, or a home which is a permanent structure, owned by a tenant;
- "rental unit" means any living accommodation, site for a mobile home or site on which a single family dwelling is a permanent structure used or intended for use as rented residential premises and includes a room in a boarding house or lodging house;
- "residential complex" means a building, related group of buildings or mobile home park, in which one or more rental units are located, or a site or related group of sites on each of which site is located a single family dwelling which is a permanent structure and includes all common areas, services and facilities available for the use of residents of the building, buildings, park, site or sites;

"services and facilities" includes.

(a) furniture, appliances and furnishings,

- (b) parking and related facilities,
- (c) laundry facilities,
- (d) elevator facilities,
- (e) common recreational facilities,
- (f) garbage facilities and related services,
- (g) cleaning or maintenance services,
- (h) storage facilities,
- (i) intercom systems,
- (j) cablevision facilities,
- (k) heating facilities or services,
- (1) air-conditioning facilities,
- (m) utilities and related services,
- (n) security services or facilities;

"statutory increase" means the amount by which the rent charged for a rental unit may be increased without application to the Minister under this Act or may have been increased without application under the Residential Tenancies Act or under The Residential Premises Rent Review Act, 1975 (2nd Session);

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

"subsidized public housing" means a rental unit rented to persons or families of low or modest income who pay an amount geared-to-income for that unit by reason of public funding provided by the Government of Canada, Ontario or a municipality, including a regional, district or metropolitan municipality, or by any agency thereof, pursuant to the National Housing Act (Canada), the Housing Development Act or the Ontario Housing Corporation Act;

R.S.C. 1970, c. N-10 R.S.O. 1980, cc. 209, 339

"tenancy agreement" means an agreement between a landlord and a tenant for occupancy of a rental unit, whether written, oral or implied;

"tenant" means a person who pays rent in return for the right to occupy a rental unit and his or her heirs, assigns and personal representatives but does not include a person who has the right to occupy a rental unit by virtue of being a coowner of the residential complex in which the rental unit is situate or a shareholder of a corporation that owns the residential complex, and a sub-tenant is a tenant of the person giving the sub-tenant the right to occupy the rental unit.

2.—(1) This Act applies to rental units in residential com- Application plexes, despite any other Act and despite any agreement or waiver to the contrary.

(2) Where a provision of this Act conflicts with a provision Conflict of any other Act, except the Human Rights Code, 1981, the 1981, c. 53 provision of this Act applies.

(3) Notwithstanding subsection (1), where a provision in a Conflict with written tenancy agreement between a landlord and a tenant conflicts with the provisions of this Act concerning the amount agreement of rent which may be charged for a rental unit, and where the tenancy agreement was entered into before the 2nd day of May, 1985, in respect of a rental unit which was, before the 1st day of August, 1985, exempt from Part XI of the Residen- R.S.O. 1980, tial Tenancies Act under clause 134 (1) (c), (d) or (e) of that Act, the provision in the agreement applies to the rental unit so long as the tenant who entered into the agreement remains the tenant of the rental unit.

provision in

(4) Subsection (3) does not apply to a tenancy agreement that provides for the payment at the commencement of the does not term of the tenancy of a lump sum as the basic rent for the apply rental unit for a term of ten or more years and that includes provision for the payment by the tenant on a periodic basis of additional amounts related to the cost of maintenance of common areas and other miscellaneous expenses associated with the rental unit.

Where

(5) Notwithstanding subsection (1), where a written agree- Agreement ment between a landlord and a tenant, entered into before the payment of day this section comes into force, contains a provision requirexcess rent ing the landlord to repay to the tenant any amount of rent that the landlord has charged in excess of that permitted by Part XI of the Residential Tenancies Act or by The Residential R.S.O. 1980, Premises Rent Review Act, 1975 (2nd Session), or permitting 1975 (2nd the tenant to recover such an amount by deducting a sum Sess.), c. 12 from the tenant's rent for a number of rent payment periods, the provision applies notwithstanding anything to the contrary in this Act.

3. This Act is binding on the Crown.

Act binds Crown

4.—(1) This Act does not apply to,

Exemptions from Act

- (a) transient living accommodation provided in a hotel, motel, inn, tourist home or hostel;
- (b) living accommodation occupied as a vacation home for a seasonal or temporary period;
- (c) living accommodation, whether situate on or off a farm, where occupancy of the premises is conditional upon the occupant continuing to be employed on the farm;
- (d) living accommodation provided by a non-profit cooperative housing corporation to its members;
- (e) living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care;
- (f) living accommodation established to temporarily shelter persons in need;
- (g) living accommodation provided in connection with the purposes for which the institution is established by a hospital, a nursing home or a home for the aged;
- (h) living accommodation provided by an educational institution to its students or staff where,
 - (i) the living accommodation is provided primarily to persons under the age of majority, or
 - (ii) all major questions related to the living accommodation are decided after consultation with a council or association representing the residents,

unless the living accommodation has its own selfcontained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households;

 (i) living accommodation situate in a building or project used in whole or in part for non-residential purposes where the occupancy of the living accommodation is necessarily connected with the employment of the occupant in, or the performance by him or her of services related to, a non-residential business or enterprise carried on in the building or project;

- (j) premises occupied for business or agricultural purposes with living accommodation attached under a single lease unless the person occupying the living accommodation is a person other than the person occupying the premises for business or agricultural purposes, in which case the living accommodation shall be deemed to be a rental unit.
- (2) The Minister, on the application of a landlord or a ten-Order ant, or on the Minister's own motion, may make an order under subsection 13 (3) declaring that the Act does not apply application to particular transient living accommodation provided in a of Act to suite hotel in accordance with the regulations made under this Act.

(3) This Act, except sections 5 and 6, does not apply to,

application, except for

- a rental unit situate in a residential complex owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, except where otherwise prescribed, but where the tenant occupying the rental unit pays rent to a landlord which is not the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, this Act does apply;
- a rental unit situate in a non-profit housing project, rents for which are subject to the approval of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof or situate in a non-profit co-operative housing project as defined in the National Housing Act (Canada):

R.S.C. 1970, c. N-10

- a rental unit not otherwise exempt from this Act that is provided by an educational institution to a student or member of its staff except that, where there is a council or association representing the residents, the exemption does not apply in respect of a rent increase unless there has been consultation with the council or association respecting the increase:
- a rental unit situate in a residential complex owned, operated or administered by a religious institution for a charitable use on a non-profit basis.

Subsidized public housing

8

(4) This Act does not apply to an increase in the amount geared-to-income paid by a tenant in subsidized public housing who is occupying a rental unit, other than a unit referred to in clause (3) (a) or (b), but this Act does apply to the unit itself.

PART I

NOTICE OF RENT INCREASES

Notice of rent increase

- 5.—(1) The rent charged for a rental unit shall not be increased unless the landlord gives the tenant a notice in the prescribed form setting out the landlord's intention to increase the rent and the amount of the increase, expressed both in dollars and as a percentage of the current rent, and of the current maximum rent, if it is higher than the current rent, intended to be made not less than ninety days before the end of.
 - a period of the tenancy; or
 - (b) the term of a tenancy for a fixed period.

Increase void where no notice

(2) An increase in rent by the landlord where the landlord has not given the notice required by subsection (1) is void.

Notice unnecessary for new tenant

(3) Subsections (1) and (2) do not apply to a rent increase for a rental unit where the rent increase takes effect when a new tenant first occupies the rental unit under a new tenancy agreement.

Notice of rent increase deemed in compliance with R.S.O. 1980, c. 232, ss. 123, 129 (1)

(4) A notice of rent increase given in compliance with this section and section 21 or in compliance with subsection 60 (1) and section 99 of the Residential Tenancies Act shall be deemed to be and always to have been sufficient notice for the purposes of section 123 and subsection 129 (1) of the Landlord and Tenant Act.

Where tenant fails to give notice of termination

6.—(1) Where a tenant who has been given a notice of an intended rent increase under section 5 fails to give the landlord proper notice of termination under the Landlord and Tenant Act, the tenant shall be deemed to have accepted the amount of rent increase that does not exceed the amount allowed under this Act.

Deemed acceptance not to constitute waiver of tenant's rights

(2) The deemed acceptance by a tenant of an increase in rent in the case mentioned in subsection (1) does not constitute a waiver of the tenant's rights to take whatever proceedings are available under this Act in respect of the rent that may be charged for a rental unit.

7. Where a notice of an intended rent increase has been given under section 5, a rent increase up to the lesser of,

chargeable until order takes effect

- (a) the intended rent increase specified in the notice; and
- (b) the limit imposed by section 71,

may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

PART II

GENERAL

8. The Minister is responsible for the administration of Administration Administration

Minister may establish

9. The Minister may by order establish regions in Ontario for the purposes of this Act.

Proceedings in region

regions

10. All proceedings under this Act shall be held in the region in which the residential complex in question is situate unless the Minister or the Board, as the case may be, otherwise directs.

11. The Minister shall,

Duties of Minister

- (a) provide information and advice to the public on all residential tenancy matters including referral where appropriate to social or community services and public housing agencies;
- (b) investigate cases of alleged failure to comply with an order made under this Act or to comply otherwise with the provisions of this Act and, where the circumstances warrant, commence or cause to be commenced proceedings in respect of the alleged failure to comply;
- (c) take an active role in ensuring, by any suitable method, including the making of grants, that landlords and tenants are aware of the benefits and obligations established by this Act; and
- (d) establish such committee or committees as the Minister considers advisable to periodically review and make recommendations, commencing in 1989, to

the Minister concerning the Residential Complex Cost Index and the Building Operating Cost Index.

Delegation

12. The Minister may in writing delegate any power or duty granted to or vested in the Minister under this Act to any officer or employee of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in the delegation.

Exclusive jurisdiction of Minister and Board

13.—(1) Subject to subsections (4) and (5), the Minister and, on an appeal or where a matter has been referred to it by the Minister, the Board, have exclusive jurisdiction to examine into and determine all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Minister and the Board.

Procedural and interpretative rules and policies (2) The Minister and the Board, in the interpretation and administration of this Act or when exercising any power or discretion conferred under this Act, shall observe such procedural and interpretative rules and policies as are prescribed.

Minister may determine application of Act, etc.

- (3) The Minister, on the application of a landlord or a tenant, or on the Minister's own motion, may make an order determining,
 - (a) whether this Act applies to a particular rental unit or residential complex;
 - (b) the rental units, common areas, services and facilities that are included in a particular residential complex;
 - (c) whether an agreement referred to in subsection 97 (4) has been entered into as a result of some form of coercion; and
 - (d) any other prescribed matter of concern respecting the application of this Act.

No order for payment over \$3,000

(4) In any proceedings under this Act, neither the Minister nor the Board shall make an order for the payment of money in excess of \$3,000, but where the Minister or the Board would be justified in making an order for the payment of money in excess of \$3,000, the person to whom the payment would otherwise be made may, by notice in writing in the prescribed form filed with the Minister or the Board, abandon the excess over \$3,000 and the Minister or the Board in that case may make an order for the payment of \$3,000 to the per-

son and the abandonment extinguishes all rights in respect of the excess.

(5) Where, under this Act, a person claims a sum of money Court in excess of \$3,000, he or she may institute proceedings therefor in any court of competent jurisdiction and the court may exercise any powers that the Minister or the Board could have exercised had the proceedings been before the Minister or the Board.

14.—(1) A board to be known as the Residential Rental Residential Standards Board, hereinafter called the Standards Board, is Rental Standards established, composed of such number of members as the Board Lieutenant Governor in Council appoints.

established

(2) The Standards Board shall be assisted in the performance of its duties by such officers and employees of the Ministry as the Minister assigns for the purpose.

Assignment of staff to Standards

(3) The members of the Standards Board shall be paid such remuneration and expenses as the Lieutenant Governor from time to time determines.

(4) No action or other proceeding for compensation or Immunity for damages shall be instituted against the Standards Board or good faith any member of the Standards Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

15.—(1) The Standards Board shall.

Duties of the Standards Roard

- (a) recommend to the Minister the appropriate minimum maintenance standards that should be made applicable to residential complexes and the rental units located therein and appropriate standards relating to the health and safety of the occupants thereof:
- recommend to the Minister the powers and duties (b) that should be conferred or imposed on the Standards Board respecting the development and enforcement of appropriate maintenance standards for residential complexes and the rental units located therein and for standards relating to the health and safety of the occupants thereof:
- (c) recommend to the Minister the form and content of such educational or other programs as will ensure

that landlords and tenants are made aware of the benefits conferred and obligations imposed by the provisions of this Act respecting maintenance standards and their enforcement;

- (d) recommend to the Minister methods of providing for recognition of the importance of dialogue between the landlord and the tenants occurring on a meaningful and timely basis regarding proposed capital expenditures in respect of a residential complex while at the same time acknowledging the rights and responsibilities of landlords to manage their buildings;
- (e) receive a copy of any order relating to a residential complex or any rental unit located therein,
- 1983, c. 1

- (i) issued by a property standards officer under a by-law passed under section 31 of the *Planning Act*, 1983 or a predecessor thereof or passed under any special Act respecting standards for maintenance and occupancy that is in force in a municipality, or
- (ii) made under the provisions of any general or special Act, or any by-law passed thereunder, respecting standards relating to the health or safety of occupants of buildings or structures,

and any notices of appeal from such an order;

- (f) receive and investigate any written complaint from a current tenant of a rental unit respecting the standard of maintenance that prevails in respect of the rental unit or residential complex in which the rental unit is located, where minimum maintenance standards adopted by the Standards Board under the authority of subsection 16 (1) are in force in the area in which the residential complex is situate.
- Where Standards Board receives copy of maintenance order
- (2) Where the Standards Board receives a copy of an order referred to in clause (1) (e), the Standards Board shall determine whether the standard or standards to which the order relates is or are substantial and if so may cause such investigation to be made as the Standards Board considers necessary to enable it to determine whether or not the order has been complied with in accordance with its terms, and if not, whether the non-compliance is substantial.

(3) Where the Standards Board determines under subsec-Report to tion (2) that substantial non-compliance with a substantial standard has occurred and is subsisting, the Standards Board shall give to the Minister a report in writing setting out the findings of the Standards Board in respect of the matter and shall at the same time give a copy of the report to the landlord of the residential complex and to the tenant of any rental unit affected thereby.

the Minister

(4) Where the report received by the Minister under sub- Order that section (3) indicates that substantial non-compliance with a rent in be not substantial standard has occurred and is subsisting, the Minis-collected ter, on his or her own motion, may order that any increase in the rent for a rental unit in the residential complex affected by the maintenance and occupancy order,

- (a) that will take effect on or after the date of the Minister's order: or
- (b) that took effect at any time in the nine-month period preceding the date of the Minister's order.

be not collected by the landlord until the Minister either receives a report from the Standards Board that the residential complex and any affected rental unit located therein are in substantial compliance with the provisions of the maintenance and occupancy order or so determines under subsection (8).

(5) Where the Minister makes an order under subsection Date after (4) to which clause (b) thereof applies, the order shall specify which landlord may the date the report of the Standards Board is given to the not collect Minister under subsection (3) as the date on or after which the landlord may not collect an increase in rent.

rent increase

(6) Where the tenant of a rental unit affected by an order Order for of the Minister made under subsection (4) has paid to the repayment of rent increase landlord any amount of an increase in rent that is declared by the order not to be collected, the Minister shall order the landlord to repay to the tenant the amount of the increase in rent that was paid.

(7) An order made by the Minister under subsection (4) Collection of may provide that where a report from the Standards Board forfeited that the residential complex and the rental units situate therein are in substantial compliance with the provisions of the maintenance and occupancy order is not received by the Minister, or where the Minister does not so determine under subsection (8), within such period of time as the Minister specifies in the order, the right of the landlord to collect any increase in the rent for a rental unit situate in the residential

complex is forfeit and no increase in the rent for such a rental unit may be collected by the landlord except in respect of a period commencing after the day the Minister either receives such a report from the Standards Board or determines under subsection (8) that there is substantial compliance.

Notice to Minister of

(8) Where a landlord to whom an order has been given completion of under subsection (4) completes the work in respect of which the order was made, the landlord may give a notice to that effect to the Minister and thereupon or where for any other reason the Minister considers it desirable to do so, the Minister may inspect or cause to be inspected the work to determine whether there is substantial compliance with the maintenance and occupancy order for the purposes of subsection (4) or (7).

Matters taken into account by Minister

- (9) In deciding whether to make an order under subsection (4), or to include the provision authorized by subsection (7), the Minister shall take into account.
 - (a) the nature of the work required to be performed to comply with the maintenance and occupancy order and the history of the matter that is the subject of that order:
 - actual seasonal factors and financial constraints affecting the ability of the landlord to perform the required work; and
 - the availability of the persons and materials required to perform the required work.

Effect of order under R.S.O. 1980, c. 232, s. 96

(10) The Minister shall not make an order under subsection (4) where an order has been made under section 96 of the Landlord and Tenant Act and where compliance with that order would afford an adequate remedy to the tenant of any affected rental unit.

Inspection

(11) Subject to subsection (12), any member of the Standards Board and any employee of the Ministry assigned by the Minister to assist the Standards Board in the exercise of its powers under this Act may, on giving adequate prior written notice of the intention to do so, at reasonable times and upon producing proper identification, enter and inspect any residential complex or rental unit located therein.

Entry into dwelling place R.S.O. 1980, c. 400

(12) Except under the authority of a search warrant issued under section 142 of the Provincial Offences Act, a member of the Standards Board or an employee of the Ministry referred to in subsection (11) shall not enter any room or place actually

used as a dwelling without requesting and obtaining the consent of the occupier, first having informed the occupier that the right of entry may be refused and entry made only under the authority of a search warrant.

16.—(1) The Standards Board shall develop and adopt Adoption of such minimum maintenance standards as it considers appropriate to make applicable to residential complexes and the standards rental units located therein that are situate in an area,

(a) where no by-law passed under section 31 of the Planning Act, 1983 or a predecessor thereof or 1983, c. 1 passed under any special Act respecting standards for maintenance and occupancy is in force;

- (b) where, although such a by-law is in force, the maintenance standards set out in it are, in the opinion of the Standards Board arrived at after consultation with the council of the municipality concerned, inappropriate for the purposes of this Act; or
- (c) where, although such a by-law is in force, the methods of enforcement of the by-law are, in the opinion of the Minister arrived at after consultation with the council of the municipality concerned, inappropriate for the purposes of this Act.
- (2) Upon adopting minimum maintenance standards under Notice subsection (1), the Standards Board shall cause the standards to be published in The Ontario Gazette and shall give such further notice thereof as the Standards Board considers appropriate to bring the standards to the attention of landlords of residential complexes and the tenants of the rental units located therein that are affected thereby.

(3) Upon receiving a complaint under clause 15 (1) (f), the Investigation Standards Board shall cause such investigation to be made as the Standards Board considers necessary to enable it to determine whether there exists substantial non-compliance with a substantial maintenance standard adopted by the Standards Board

(4) Where the Standards Board is satisfied that there exists Contents of in respect of a residential complex or the rental units located therein substantial non-compliance with a substantial maintenance standard adopted by the Standards Board, the Standards Board may make and give or cause to be given to the landlord of the residential complex an order containing,

- (a) the municipal address or legal description of the residential complex;
- (b) reasonable particulars of the work to be performed and the period within which there must be compliance with the terms of the order; and
- (c) the time limited for applying to the Minister for a review of the order.

Application for review of order

(5) Where a landlord to whom an order has been given under subsection (4) is not satisfied with the terms of the order, the landlord may, within fourteen days of the giving of the order, make an application in the prescribed form to the Minister to review the order.

Order of Minister

- (6) On an application under subsection (5), the Minister may by order,
 - (a) affirm the order of the Standards Board;
 - (b) quash the order of the Standards Board;
 - (c) vary the order of the Standards Board; or
 - (d) substitute the Minister's own order for the order of the Standards Board.

Copy of order

(7) The Minister shall forthwith give a copy of an order made under subsection (6) to the landlord and to any tenant directly affected by the order.

Appeal from the Minister's order under subs. (6) (8) An order of the Minister made under subsection (6) may be appealed to the Board only in the manner and under the circumstances set out in subsection (10) except that subsection (10) does not apply to an order made under subsection (6) that quashes the order of the Standards Board.

Order of the Minister (9) Where the Minister on the report of the Standards Board is satisfied that an order under this section has not been substantially complied with in accordance with its terms within the period set out for doing so, the Minister, after taking into account the matters mentioned in subsection 15 (9), may, on his or her own motion, make any order the Minister is empowered to make under subsection 15 (4) or (7), the provisions of which subsections apply with necessary modifications.

Joining of appeals from Minister's orders made under subss. (6) and (9) (10) Where a landlord or tenant appeals to the Board from an order of the Minister made under subsection (9), the landlord or tenant may at the same time appeal from any related order of the Minister made under subsection (6), and where the landlord or tenant does so the Board shall hear and determine both appeals together.

PART III

PROCEDURE

17. A person may make an application to the Minister as a Who may landlord or as a tenant, provided the person was a landlord or application a tenant at the time the conduct giving rise to the application occurred

18.—(1) An application to the Minister shall be made in Form of the prescribed form and shall be signed by the person making the application or his or her agent.

(2) Where a landlord makes an application to the Minister Where name and the name of any tenant directly affected by the appli- ot tenant not known cation is not known to the landlord, the name of the tenant may be shown in the application as "tenant" and all orders shall be binding on the tenant occupying the rental unit as if the tenant had been correctly named.

(3) Where a tenant makes an application to the Minister Where name and the name of the landlord is not known to the tenant, the not known name of the landlord may be shown in the application as "landlord" and all orders shall be binding on the landlord as if the landlord had been correctly named.

19.—(1) Where a landlord makes an application to the Landlord Minister, the landlord shall within ten days give a copy of the must give copy of application to any tenant, sub-tenant or occupant who, at the application to time the application is made, is directly affected by the issues raised in the application.

must give tenant, etc.

(2) Where a tenant makes an application to the Minister, Tenant must the tenant shall within ten days give a copy of the application application to to the landlord.

(3) Where, before an order is made in respect of any application to the Minister, a landlord or tenant is succeeded by a new tenant new landlord or tenant, the applicant shall within ten days of becoming aware of such change give the new landlord or tenant a copy of the application.

Where new

(4) The Minister shall, on request, give written directions Minister may concerning the giving of copies of an application, and compliance with the directions of the Minister shall be deemed to be compliance with this section.

Extension of time for application, etc.

(5) The Minister may, whether or not the time for making an application to the Minister or giving a copy of the application to any party or filing any documents has expired and where the Minister is of the opinion that it would not be unfair to do so, extend the time for the making of the application to the Minister or giving the application to any party or the filing of any documents, and the Minister may attach such terms and conditions to the extension of time as the Minister considers appropriate and shall give notice in writing of the extension of time to all affected parties.

Application of subss. (1-5) to appeals

(6) The provisions of subsections (1) to (5) apply with necessary modifications to appeals to the Board under Part VII of this Act.

Nonapplication to joint applications (7) This section, except for subsection (5), does not apply to a landlord and any tenants who jointly make an application under section 86 or 89, or who jointly appeal an order made pursuant to the application.

Notice to tenant where rental unit sublet 20.—(1) A tenant who has sublet a rental unit may give notice in writing to the landlord that the tenant requires the landlord to give him or her a copy of any application made by the landlord under this Act or any other notice required to be given by the landlord under this Act that affects the rental unit that is the subject of the subletting and where the tenant does so the landlord shall give a copy of the application or other notice to the tenant by sending it by mail to the address set out in the notice given by the tenant.

Notice to prospective new tenant

(2) The landlord shall, before entering into a tenancy agreement with a new tenant, give the new tenant a notice in writing setting out the maximum rent for the rental unit and shall inform the new tenant of the most recent notice of rent increase given, any pending application made by the landlord under this Act and any current order made in respect of an application or made on the Minister's own motion and any notice of appeal that is pending therefrom.

Where tenant not informed of maximum rent (3) Where the landlord fails to give the new tenant a notice setting out the maximum rent for the rental unit, if the rent initially charged the new tenant is less than the maximum rent, subsection 71 (4) does not apply unless the new tenant has occupied the rental unit for at least a twenty-four month period.

Method of giving notice, etc.

21.—(1) Where this Act permits or requires a notice or document to be given to a person, the notice or document is sufficiently given by,

- (a) handing it to the person, or,
 - (i) where the person is a landlord, to any employee of the landlord exercising authority in respect of the residential complex, or
 - (ii) where the person is a tenant, sub-tenant or occupant, to an apparently adult person in the
- (b) leaving it in the mail box where mail is ordinarily delivered to the person:
- (c) where there is no mail box, leaving it at the place where mail is ordinarily delivered to the person; or
- (d) sending it by mail to the address where the person resides or carries on business.
- (2) Where a notice or document is given by mail, it shall be Where notice deemed to have been given on the fifth day after mailing.

given by

(3) Notwithstanding the other provisions of this section, the Minister or the Board, as the case may be, may in writing direct a notice or document to be given in any other manner.

Minister or Board may give written directions

(4) Notwithstanding the other provisions of this section, a notice or document shall be deemed to have been validly given where it is proven that the contents of the notice or document actually came to the attention of the person for whom the notice or document was intended within the time for the giving of the notice or documents under this Act.

Actual notice

(5) The computation of time under this Act shall be in Computation of time accordance with prescribed rules.

22. The parties to an application or an appeal are the per- Parties to sons making the application or appeal, any person entitled, application or appeal other than under subsection 19 (3), to receive a copy of the application or a notice of appeal and any person added as a party by the Minister or the Board.

23. Where, in any proceedings under this Act, the Minis-Changing ter or the Board is of the opinion that,

parties: amending applications

a person who should be included as a party has not been included as a party or that a party has been incorrectly named, the Minister or the Board, as the case may be, shall, unless it would be unfair to do so, require that the person be substituted or added as a party to the proceedings, or be correctly named;

- (b) a person who has been included as a party should not be included as a party, the Minister or the Board, as the case may be, shall require that the person be removed as a party to the proceedings; or
- (c) an amendment to the application or the notice of appeal is justified and fair, the Minister or the Board, as the case may be, may direct the application or notice of appeal be amended accordingly.

Frivolous or vexatious applications or appeals **24.** The Minister or the Board, as the case may be, may refuse to continue any proceedings where, in the opinion of the Minister or the Board, as the case may be, the matter is trivial, frivolous, vexatious or has not been initiated in good faith.

Withdrawing application

25.—(1) An applicant may withdraw an application at any time before the time for submitting representations has ended and thereafter the application may only be withdrawn with the consent of the Minister and the Minister may impose terms on which his or her consent is given.

Withdrawing joint application

(2) A landlord who is party to a joint application under section 86 or 89 may withdraw the application as provided in subsection (1).

Idem

(3) Where all the tenants who are parties to a joint application under section 86 or 89 desire to withdraw the application, they may do so as provided in subsection (1).

Idem

(4) Where the tenants of less than all of the rental units subject to a joint application under section 86 or 89 desire to withdraw the application, they may withdraw their rental units from the application as if they were withdrawing an application under subsection (1) and the application shall continue in respect of the remaining rental units that are subject to the application.

Withdrawing appeal

(5) A landlord or tenant may withdraw an appeal at any time before the hearing of the appeal has commenced but, where the hearing has commenced, the appeal may only be withdrawn with the consent of the Board and the Board may impose terms on which its consent is given.

Withdrawing joint appeal

(6) Where an appeal of an order made under section 87 or 89 has been brought jointly by a landlord and one or more tenants, the appeal may be withdrawn under subsection (5)

only where the landlord or all tenants who are parties to the appeal desire to withdraw the appeal.

26.—(1) Where a landlord or a tenant makes an appli- Filing of cation other than under section 74 or 86, except as otherwise provided under section 63, the party making the application shall, not later than fifteen days from the date of making the application, file with the Minister the documents and material the party relies upon in support of the application and such other material as may be prescribed.

(2) Any party to an application referred to in subsection (1) Inspection may inspect the application and the documents and material submission of filed in respect thereof and any party other than the applicant representmay submit representations in respect of the application and the material filed therewith not later than thirty days from the date of making the application, or such later date as the Minister may allow and where a party does so, the applicant may submit representations in response thereto not later than forty-five days from the date of the making of the application.

and

(3) Where the Minister extends the time for filing set out in Effect of subsection (1), the Minister shall notify the parties affected by of time the application of the extended filing date and of the extended times for making representations under subsection (2) in consequence thereof.

27. All parties to a proceeding under this Act and all per- Parties may sons who have received a notice under section 28 are entitled examine material to examine, and the Minister and the Board, as the case may be, shall make available for examination all material filed with the Minister or the Board pertaining to the proceeding.

28.—(1) Before making any order that the Minister is Notice by empowered to make on his or her own motion, the Minister shall give a notice in the prescribed form to any landlords and tenants who would be directly affected by the order, and the Minister shall not make an order sooner than sixty days after the giving of the notice.

Minister

(2) Any person who receives a notice under subsection (1) may, not later than thirty days from the giving of the notice documents by the Minister, submit documents and make representations and to the Minister in respect thereof.

Submission represent-

29. The Minister may at any time in his or her discretion Referral of refer any application made to the Minister, or any matter that to Board has been commenced on the Minister's own motion, to the Board and the Board in such case shall hear and determine

the application or matter as though it were an appeal under Part VII.

Powers of Minister

- <u>30.</u>—(1) The Minister in respect of any application, or any matter that has been commenced on the Minister's own motion, under this Act may,
 - (a) conduct any enquiry or inspection of documents or premises the Minister considers necessary;
 - (b) question any person, by telephone or otherwise;
 - (c) convene a meeting between the parties to the application or between any persons directly affected by the order for the purpose of discussion of issues raised by the application or matter; and
 - (d) by notice in writing, direct any party to the application, or any person directly affected by the matter, to file, within such time as is set out in the notice, such information or additional information as the Minister considers necessary.

Time and place of meeting

(2) So far as is practicable, the Minister shall hold the meeting mentioned in clause (1) (c) at a time and place agreed to by the parties or persons directly affected.

Inspection

(3) Where, under clause (1) (d), the Minister has directed information or additional information to be filed, the Minister shall notify each of the other parties to the application or landlords and tenants directly affected of the direction and any other party to the application or landlord or tenant directly affected may inspect the information or additional information filed and may submit representations in respect thereof not later than twenty days from the date on which the information or additional information was required to be filed.

Time for submitting representations (4) Where a direction under clause (1) (d) is in respect of an application made under section 74 (whole building review), any party to the application may submit representations in respect thereof not later than forty days before the effective date of the first rent increase applied for or not later than twenty days from the date on which the information or additional information was required to be filed, whichever the last occurs.

Where information or additional information not filed (5) Where any party to an application fails to comply with a direction of the Minister under clause (1) (d) to file any information or additional information, the Minister may,

- (a) in the case of the applicant, refuse to make an order granting the application or that part of the application relating to the failure to comply with the direction: and
- (b) in the case of any other party to the application, or person directly affected by the matter, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.
- 31. In making any determination in an application under Matters to be this Act or on any matter commenced on the Minister's own motion, the Minister,

- (a) shall consider any documents, material and oral or written representations submitted in respect of the application or matter commenced on the Minister's own motion; and
- (b) may consider any relevant information obtained by the Minister in addition to the information referred to in clause (a), provided that the Minister first informs the parties of the additional information and gives them an opportunity to explain or refute
- 32. Where an application is made to the Minister under Nonthis Act, or where the Minister gives a notice under section of application 28, a hearing shall not be held in respect of the application or R.S.O. 1980, the matter referred to in the notice and the Statutory Powers Procedure Act does not apply to the Minister in the exercise of a statutory power of decision under this Act.

33.—(1) An order made by the Minister under this Act, Order of subject to Part VII, is final, binding and not subject to review final and shall take effect and is enforceable according to its terms from the date it is made.

(2) Where the Minister makes an order under this Act, the Copy of Minister shall forthwith give a copy of the order to each of the parties to the application, or where the order is made on the Minister's own motion, to each landlord and tenant directly affected by the order, together with a written summary in the prescribed form of reasons for the order.

34.—(1) The Minister or the Board may include in any Terms and order terms and conditions the Minister or the Board, as the case may be, considers proper in all the circumstances.

Clerical errors

(2) An order made by the Minister or by the Board that contains a clerical error or omission of the Minister or the Board may be amended by the Minister or the Board, as the case may be, at any time before the hearing of any appeal of the order has been commenced.

Where tenant may deduct amount from rent <u>35.</u>—(1) Where the Minister or the Board makes an order requiring a landlord to pay an amount of money to a tenant, the Minister or the Board may make an order that the tenant may recover the amount by deducting a specified sum from his or her rent for a specified number of rent payment periods.

Lump sum payments

(2) The Minister or the Board may, on the application of the tenant, rescind an order made under subsection (1) and may order that any compensation still owing be paid in a lump sum.

Enforcement of order for the payment of money <u>36.</u>—(1) A certified copy of an order of the Minister or the Board, as the case may be, for the payment of money may be filed with the Supreme Court, the District Court or the Provincial Court (Civil Division) and, on being filed, the order has the same force and effect and all proceedings may be taken on it as if it were a judgment of that Court.

Variation of order

- (2) Where an order filed under subsection (1) is rescinded or varied, upon filing in accordance with subsection (1), the order or decision rescinding or varying the order previously made,
 - (a) if the order or decision rescinds the order previously made, the order previously made ceases to have effect for the purposes of subsection (1); or
 - (b) if the order or decision varies the order previously made, the order previously made as so varied may be enforced in a like manner as an order or decision filed under subsection (1).

PART IV

RENT REVIEW HEARINGS BOARD

Board established

<u>37.</u> A board to be known as the Rent Review Hearings Board is established.

Composition of Board

<u>38.</u>—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint.

(2) The members of the Board who are not members of the Remuneration public service of Ontario shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines

(3) The Public Service Superannuation Act and the Application Superannuation Adjustment Benefits Act apply to members of R.S.O. 1980, the Board.

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39. Members of the Board, other than the vice-chairman, shall not be members of the public service of Ontario, and shall hold office during pleasure.

40. Subject to subsection 103 (2), one member of the Quorum Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Board in any proceedings before the Board.

41.—(1) The Lieutenant Governor in Council shall Chairman appoint one of the members of the Board as chairman, and chairman another of the members as vice-chairman.

(2) The chairman shall from time to time assign members Chairman of the Board to its various sittings and shall be the chief executive officer of the Board

officer

(3) The vice-chairman is responsible for the general Absence, administration of the affairs of the Board and where the chair- of chairman man is absent or unable to act, the vice-chairman may act as chairman

42. Where a member of the Board resigns or retires, or Completion for any other reason ceases to be a member, the member matters by may, with the consent of the chairman, in connection with any members matter in which the member participated as a member of the who resign or Board, carry out and complete any duties or responsibilities retire, etc. and exercise any powers that the member would have had if the member had not ceased to be a member of the Board.

43.—(1) The members shall devote the whole of their Members time to the performance of their duties as members of the Board, and shall not accept or hold any office or employment inconsistent with such duties.

(2) The members shall file with the Board a written declara- Conflict of tion of any interests they have in residential rental property, and shall be required to comply with the conflict of interest guidelines established by the Board.

Staff c. 418

44. Such employees as are required for the purposes of R.S.O. 1980, the Board may be appointed under the *Public Service Act*.

Professional assistance

45. Subject to such conditions as the Minister may set, the Board may engage persons other than those appointed under section 44 to provide professional, technical or other assistance to the Board and may establish the duties and terms of the engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity for acts done in good faith

46. No action or other proceeding for compensation or damages shall be instituted against the Board, any member of the Board or any member of the Board staff, for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Publication of decisions

47. The Board shall, at least annually, prepare and publish a summary of significant decisions of the Board and the reasons therefor.

Board to adopt expeditious procedures

48. The Board shall adopt the most expeditious method of determining the questions arising in any proceeding that affords to all persons affected by the proceedings an adequate opportunity to know the issues and be heard on the matter.

Decision to be on merits

49.—(1) Every decision of the Board shall be upon the real merits and justice of the case.

Board to ascertain substance of transactions and activities, etc.

- (2) In determining the real merits and justice of the case, the Board shall ascertain the real substance of all transactions and activities relating to the residential complex and the good faith of the participants and in doing so,
 - may disregard the outward form of the transaction (a) or the separate corporate existence of the participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex.

Audit

50. The accounts of the Board shall be audited annually by the Provincial Auditor.

Annual report

51.—(1) The Board shall at the close of each year file with the Minister an annual report upon the affairs of the Board.

(2) The Board shall make such further reports to the Minis-Further ter and provide the Minister with such information as the Minister from time to time requires.

RESIDENTIAL RENT REGULATION

(3) The Minister shall submit the reports to the Lieutenant Tabling Governor in Council and shall then lay the reports before the Assembly if it is in session or, if not, at the next ensuing session.

of reports

52. All expenses incurred and expenditures made by the Moneys Board in the conduct of its affairs shall be paid out of moneys appropriated therefor by the Legislature.

53. The Board may charge and collect such fees as are Fees prescribed for furnishing to any person, at his or her request, copies of forms, notices or documents filed with or issued by the Board.

PART V

RENT REGISTRY

54.—(1) In this Part,

Definitions

"actual rent", except where otherwise prescribed, means the rent actually charged for a rental unit as of the actual rent date:

"actual rent date" means,

- (a) the 1st day of July, 1985, or
- (b) where a rental unit was not rented on the 1st day of July, 1985, the first date on which that rental unit is rented after the 1st day of July, 1985.

55. The Minister shall establish and maintain a rent registry for all residential complexes that are subject to this Act.

Establishment of rent registry by Minister

<u>**56.**</u>—(1) The Minister shall, on the request of any person made in the prescribed manner, furnish that person with information that is recorded in the rent registry in respect of any rental unit, but may limit the information so furnished in accordance with the prescribed rules.

Furnishing of information from rent registry

(2) The Minister may charge such fees as are prescribed for Fees furnishing information under subsection (1).

57.—(1) Every landlord of a residential complex contain- Filing of ing more than six rental units, other than a residential com-

plex that is a boarding house or a lodging house, shall file a statement in the prescribed form with the Minister,

- (a) on or before the first day of the month that falls not sooner than ninety days after the day this section comes into force, in respect of all rental units in the residential complex that were rented on or before the day this section comes into force; and
- (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

- (2) Every landlord of a residential complex containing six or fewer rental units or of a residential complex that is a boarding house or a lodging house shall file the statement mentioned in subsection (1),
 - (a) on or before a date to be prescribed, in respect of all rental units in the residential complex that were rented on or before that date; and
 - (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

(3) Notwithstanding that a date has not been prescribed under subsection (2), a landlord of a residential complex containing six or fewer units or of a residential complex that is a boarding house or a lodging house may file the statement mentioned in subsection (1) at any time.

Contents of statement

<u>58.</u>—(1) The statement mentioned in section 57 shall set out the following information:

- 1. The name and address of the landlord and, where the landlord is not ordinarily resident in Ontario, the name and the address of the landlord's representative or agent in Ontario.
- 2. The municipal addresses of all buildings which form part of the residential complex.
- 3. The type (by number of bedrooms) and location (by suite number or other means of identification) of each rental unit in the residential complex that is

subject to rent regulation, together with the actual rent for each such rental unit and the date the actual rent was first charged.

- Those services and facilities, accommodations and 4. things included in the actual rent for which a separate charge is allocated and the amount of each.
- Whether the landlord, as of the actual rent date, 5. was responsible for providing hydro, water, heat, cablevision or parking without the allocation of a separate charge.
- The provisions of any written tenancy agreement 6. mentioned in subsection 2 (3) which conflict with the provisions of this Act concerning the amount of rent that may be charged for a rental unit.
- The type and location of each rental unit in the resi-7. dential complex, if any, in respect of which the information in paragraphs 3 to 6 is not required to be set out in the statement, together with the reasons therefor.
- Such other information as is prescribed. 8.

(2) Subject to subsection (3), the statement filed with the Certification Minister under section 57 shall contain a certification signed by the landlord or, if the landlord is a corporation, signed by the president, secretary or other authorized senior officer thereof, certifying that the information contained in the statement, and any attachments thereto, is true, correct and complete to the best of the landlord's knowledge and belief.

(3) A landlord may authorize an agent in writing to make Certification the certification mentioned in subsection (2), and the Minister may require a copy of the document authorizing the agent to make the certification to be filed

59.—(1) Where an order issued under this Act, the Minister to Residential Tenancies Act or The Residential Premises Rent amount Review Act, 1975 (2nd Session) affects the rent which may be where charged for a rental unit for which the actual rent has been set affects out in a statement filed under section 57, the Minister shall rental unit calculate the amount obtained by adding to the rent set out in R.S.O. 1980, the most recent such order all permissible statutory increases 1975 from the effective date of the rent in the order to the actual (2nd Sess.), rent date.

Application within 90 days

(2) Where the actual rent for a rental unit set out in the statement is the same as or lower than the amount calculated under subsection (1), or does not exceed that amount by more than the prescribed percentage, the time for making an application under section 61 in respect of that rental unit shall be not later than ninety days from the day of the giving by the Minister of a notice under section 60.

Application within two years

(3) Where the actual rent for a rental unit set out in the statement exceeds the amount calculated under subsection (1) by more than the prescribed percentage, or where there are no prior orders affecting the rent which may be charged for a rental unit, the time for making an application under section 61 in respect of that rental unit shall be <u>not later than</u> two years from the day <u>of the giving by the Minister of</u> a notice under section 60.

Notice to landlord of rents recorded <u>60.</u>—(1) As soon as is practicable, the Minister shall give to every landlord who has filed a statement under section 57 a notice in the prescribed form setting out the information recorded for all rental units for which the statement was filed and the time for making an application under section 61.

Notice to tenant of rent recorded for tenant's rental unit (2) As soon as is practicable, the Minister shall give to the tenant of every rental unit in respect of which the landlord is given a notice under subsection (1) a notice in the prescribed form setting out the recorded information pertaining to the tenant's rental unit and the time for making an application under section 61.

Application to dispute information in notice 61.—(1) A landlord or a tenant who has been given a notice under section 60 may, in the time permitted by subsection 59 (2) or (3), whichever applies, make an application in the prescribed form to the Minister to correct or amend any information in the notice or to dispute the legality of the actual rent.

Application for declaration of lawful rent

(2) A landlord who has been given a notice under subsection 60 (1) may in the time permitted by subsection 59 (2) or (3), whichever applies, make an application in the prescribed form to the Minister for an order declaring the actual rent recorded in the rent registry to be the lawful maximum rent as of the actual rent date.

Where actual rent recorded is deemed lawful rent (3) Where no application under subsection (1) or (2) is made and no notice mentioned in subsection (4) is given, the rent recorded in the rent registry for such rental unit shall be deemed to be the lawful maximum rent as of the actual rent date.

(4) In respect of any rental unit mentioned in subsection Investiga-59 (3), the Minister.

Minister

- (a) shall, in the case of a rental unit whose rent is affected by a prior order; and
- (b) may, in the case of a rental unit whose rent is not affected by a prior order.

investigate the rents charged for such rental unit and may, on the Minister's own motion, make any order which could have been made had the landlord or the tenant made an application under subsection (1) or (2), provided that the notice under subsection 28 (1) is given by the Minister within the time for making an application in respect of that rental unit.

62.—(1) In any application under section 61, or in Justification response to the Minister's own motion under that section, the of actual rent landlord may justify the actual rent for any rental unit by adding to the rent permitted to be charged set out in the most recent order made under this Act, Part XI of the Residential R.S.O. 1980, Tenancies Act or The Residential Premises Rent Review Act, 1975 (2nd Session), or where no order exists, to the rent (2nd Sess.), charged for the rental unit on the 29th day of July, 1975, or c. 12 on the earliest date thereafter for which the rent charged is known.

- rent increases permitted by Part XI of the Residential Tenancies Act and The Residential Premises Rent Review Act, 1975 (2nd Session); and
- (b) rent increases that could have been justified on or after the 29th day of July, 1975, and before the 1st day of August, 1985, on an application made under section 126 of the Residential Tenancies Act, had R.S.O. 1980, that Act been in force during the whole of that period of time and had the disposition of the application been governed by the prescribed rules made under this Act.

provided that only an increase permitted or justified under either clause (a) or (b), but not both, may be relied upon to calculate the rent increase for any one twelve-month period.

(2) Where clause (1) (b) is relied upon to calculate a rent Determinaincrease, the Minister shall determine the justified rent increase in accordance with the prescribed rules and shall consider, in the prescribed manner, any services or facilities that have been added or discontinued on or after the 29th day of

July, 1975, and before the 1st day of August, 1985, and that affect the rental unit.

Where rent justified lower than actual rent

(3) Where under this section the landlord, in respect of any rental unit, justifies a rent that is lower than the actual rent, the amount so justified by the landlord shall be deemed to be the lawful maximum rent for that rental unit as of the actual rent date.

Where section does not apply

(4) This section does not apply to a rental unit situate in a residential complex in respect of which the statement mentioned in section 57 has not been filed within the time permitted for filing.

Filing of documents and material by landlord **63.**—(1) Where a landlord makes an application under subsection 61 (1) or (2) to justify under section 62 the actual rent charged for a rental unit, the landlord shall, not later than thirty days from the date of making the application, file with the Minister the documents and material the landlord relies upon in support of the application and such other material as may be prescribed.

Inspection and submission of representations by tenant

(2) Any tenant affected by the application may inspect the application and any documents and material filed in respect thereof and may submit representations in respect of the application and the documents and material filed therewith not later than eighty days from the date of making the application.

Filing of documents and material by tenant

(3) Where a tenant makes an application under subsection 61 (1), the tenant shall, not later than fifteen days from the date of making the application, file with the Minister the documents and material the tenant relies upon in support of the application and such other material as may be prescribed.

Filing of justification, etc., by landlord; response by tenant (4) A landlord who proposes, in response to a tenant's application under section 61, to justify under section 62 the actual rent charged for a rental unit shall, not later than forty-five days from the date of the making of the tenant's application, file with the Minister a justification in the prescribed form together with the documents and material the landlord relies upon in support of the justification and such other material as may be prescribed and within ten days of the filing give a copy thereof to any affected tenant, and where the landlord does so, the tenant may submit representations in response thereto not later than ninety-five days from the date of the making of the tenant's application.

Idem

(5) A landlord who proposes, in response to the Minister's proposal to make an order under subsection 61 (4), to justify

under section 62 the actual rent charged for a rental unit. shall, not later than thirty-days from the giving by the Minister under subsection 28 (1) of the notice in respect of the proposed order, file with the Minister a justification in the prescribed form together with the documents and material the landlord relies upon in support of the justification and such other material as may be prescribed and within ten days of the filing give a copy thereof to any affected tenant, and where the landlord does so, the tenant may submit representations in response thereto not later than eighty days from the date of the giving of the notice by the Minister under subsection 28 (1).

(6) Where the Minister extends the time for filing set out in Effect of this section, the Minister shall notify the parties affected by time the application of the extended filing date and of the extended times for making representations in consequence thereof.

64. In any order made by the Minister under this Part, the Order of Minister shall.

- (a) declare the maximum rent that may be charged for each rental unit subject to the order and the earliest date that each may take effect; and
- (b) require any necessary changes to be made to the information recorded in the rent registry.
- 65. Where the Minister is satisfied that any information Clerical recorded in the rent registry is incorrect due to a clerical error or omission, the Minister may, within two years of the date of the error or omission, amend the rent registry accordingly and shall notify the affected parties of any corrected information.

66.—(1) Where a landlord has filed a statement under Rebate section 57 within the time permitted for filing, no amount shall be ordered under subsection 95 (2) in respect of any excess rent paid before the 1st day of August, 1985 in respect of any rental unit for which the actual rent has been set out in the statement.

filed on time

(2) Where a landlord has not filed a statement under section 57 or has filed a statement later than the time permitted where for filing, no amount shall be ordered under subsection 95 (2) statement for any excess rent paid more than six years before the filing filed late date of a tenant's application under that subsection.

Rebate not filed or

67. Where a landlord fails to file a statement under sec- Where tion 57 in respect of a residential complex on or before the statement in filed within expiry of the three-month period following the time specified three months

statement not of time for

in that section for the filing of the statement, the Minister on his or her own motion may order that the collection by the landlord of any increase in the rent charged for any rental unit in the residential complex be stayed until the landlord has filed the required statement.

Where no statement filed

68. On or after the first day of the month that falls not sooner than ninety days after the day determined under clause 57 (1) (a), no application made by a landlord or appeal by the landlord therefrom under this Act shall be proceeded with by the Minister or the Board if the landlord has not filed a statement under section 57 in respect of the residential complex concerned, whether or not the time for filing the statement has expired.

Register to be kept current

- **69.** The Minister shall keep current the information recorded in the rent registry by incorporating, where applicable,
 - (a) an order made under this Act;

R.S.O. 1980, c. 452

- (b) an order made under the Residential Tenancies Act;
- (c) a statutory increase permitted to be taken under this Act;
- (d) a statutory increase that was permitted under Part XI of the Residential Tenancies Act;
- (e) a notice given under subsection 92 (2);
 - (f) a written approval of the Minister given under subsection 91 (6); and
- (g) any other relevant change in the information recorded in the rent registry.

PART VI

RENT REGULATION

Twelvemonth period between rent increases 70. The rent charged for a rental unit shall not be increased unless a period of at least twelve months has elapsed since the date of the last rent increase.

Maximum increase without application

71.—(1) Unless otherwise authorized under this Act, no landlord shall increase the rent charged for a rental unit,

- (a) to take effect on or after the 1st day of August, 1985, and before the 1st day of January, 1987, by more than 4 per cent; and
- (b) to take effect on or after the 1st day of January, 1987, and to take effect on or after the 1st day of January in any subsequent year, by more than the percentage set out in the Residential Complex Cost. Index for the year, as published by the Minister and calculated in accordance with the formula set out in Schedule A hereto.

of the last rent that was charged for the rental unit for an equivalent rental period.

(2) The Minister shall calculate the Residential Complex Calculation Cost Index that is applicable for each year and shall publish the Index in The Ontario Gazette not later than the 31st day of of Index by August of the immediately preceding year.

publication

(3) Notwithstanding subsection (2), in respect of the Residential Complex Cost Index applicable for the year 1987, the Minister shall calculate and publish the Index in The Ontario Gazette not later than thirty days after the day this subsection comes into force

RCCI for

(4) A landlord may increase the rent charged for a rental Maximum unit by more than the amount permitted by clause (1) (a) or (b) without making an application under this Act, provided that the amount of the rent after the increase is applied is not higher than the maximum rent as of the date the rent increase takes effect.

72. A landlord may make an application under this Part Landlord despite the fact that the landlord may not have, in respect of any rental unit, given notice under section 5 (notice of rent increase), but nothing in this section relieves the landlord from compliance with section 5.

although notice of rent increase not yet given

73.—(1) This section applies only to rental units that, before the repeal of clauses 134 (1) (c) and (d) of the Residential Tenancies Act by section 126 of this Act, were exempt from Part XI of that Act.

Application R.S.O. 1980,

(2) Where a notice of rent increase to increase the rent charged for a rental unit by more than the increase permitted by clause 71 (1) (a) or (b), whichever is applicable, has been more given before this section comes into force, to take effect on or after the 1st day of August, 1985, where the landlord makes an application permitted under clause (3) (b), the rent (b)

Notice for increase of than amount permitted under

increase specified in the notice may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

Landlord to repay excess rent or bring application under s. 74

- (3) A landlord who has increased the rent charged for a rental unit by more than the increase permitted by clause 71 (1) (a) or (b), whichever is applicable effective on or after the 1st day of August, 1985, pursuant to a notice of rent increase given before this section comes into force, shall, on or before the sixtieth day after the coming into force of this section.
 - pay to the tenant of the rental unit the amount of the rent paid by the tenant that is in excess of the increase permitted by clause 71 (1) (a) or (b), whichever is applicable; or
 - (b) apply to the Minister under section 74 (whole building review) even though the time for making such an application set out in subsection 74 (3) has expired.

Where fails to comply with cl. (3) (a) or (b)

- (4) Where a landlord fails to comply with clause (3) (a) or (b), the tenant may,
 - deduct the amount of the rent paid by the tenant that is in excess of the increase permitted by clause 71 (1) (a) or (b), whichever is applicable from a subsequent rent payment and so continue until the full amount of the excess rent has been satisfied; or
 - (b) make an application to the Minister under subsection 95 (2).

Application by landlord

74.—(1) Where a landlord desires to increase the rent that may be charged for a rental unit by more than the amount permitted by section 71, the landlord may apply to the Minister in the prescribed form for an order permitting the landlord to do so, whether or not the rental unit is the subject of a tenancy agreement at the time of application.

Whole building review

(2) When the landlord applies to the Minister under subsection (1), the landlord shall, as part of the same application, apply for a determination of the rents that may be charged for all of the rental units in the residential complex in which the units are situate when such units are rented or re-rented during the twelve-month period following the effective date of the first rent increase applied for, whether or not those units are the subject of tenancy agreements at the time of application.

(3) An application made under this section shall be made Time for not later than ninety days before the effective date of the first application intended rent increase

(4) At the time the application is filed, the landlord shall Filing of file with the Minister a cost revenue statement in the prescribed form together with all documents that the landlord relies upon in support of the application and such other material as may be prescribed.

(5) Any tenant affected by the application may submit Submission material and make representations in respect thereto not later material and than forty days before the effective date of the first rent making of increase applied for and where a tenant does so the landlord may submit material and make representations in response thereto not later than forty days before the effective date of the first rent increase applied for or twenty days from the date of the tenant's submission, whichever is the later.

(6) Where the Minister extends the date for filing under Extension subsections (3) and (4) or the date for submitting material and making representations under subsection (5), the Minister shall notify each of the parties affected by the application of the extended date and any party shall be permitted up to forty days before the effective date of the first rent increase applied for or twenty days from the extended date, whichever is the later, to submit material and make representations in respect of the application.

75. Where an application is made by a landlord to the Determi-Minister under section 74, the Minister shall determine the by Minister total rent increase for the residential complex that is justified of total by,

rent increase

- (a) the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
- (b) the findings of the Minister concerning financing costs, capital expenditures and extraordinary operating costs that the landlord has experienced or will experience in respect of the residential complex:
- (c) the degree to which actual financing costs or capital expenditures vary from the projected amounts allowed in respect of such costs or expenditures in a previous order made under this Act or the Residen- R.S.O. 1980, tial Tenancies Act:

- (d) the prescribed allowances for management and administration in respect of capital expenditures;
- (e) the findings of the Minister concerning a financial loss that the landlord has experienced or will experience in respect of the residential complex;
- (f) the findings of the Minister concerning a change in the services and facilities provided or in the standard of maintenance and repair in respect of the residential complex or any rental unit located therein;
- (g) in respect of a residential complex no part of which was occupied as a rental unit before the 1st day of January, 1976, the rate of return that is applicable to the residential complex in order to eliminate an economic loss;
- (h) the findings of the Minister concerning financing costs no longer borne by the landlord and which were allowed in a previous order determining rent increases under this Act or the *Residential Tenancies Act*, where the rate increase in financing costs that justified the rent increase awarded in the previous order took effect on or after the 1st day of August, 1985;
- (i) in respect of a residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, the extent to which the rent for the residential complex is a chronically depressed rent within the meaning of section 91; and
- (j) the findings of the Minister concerning matters prescribed.

Where grounds for increase financing costs, financial loss, economic loss or do not include capital expenditures

R.S.O. 1980,

c. 452

76.—(1) Where, on an application made by a landlord under section 74, it is found by the Minister that the grounds that justify an increase in rent by more than the amount permitted by section 71,

- (a) are only one or more of the financing costs, financial loss or economic loss; or
- (b) do not include any amount for capital expenditures,

that the landlord has experienced or will experience in respect of the residential complex, the Minister shall apply the percentage determined under clause 71 (1) (a) or (b) whichever is

applicable, instead of the operating cost allowance determined under clause 75 (a).

(2) Notwithstanding subsection (1), where on an application Continuing made by a landlord under section 74, a capital expenditure is capital expenditure found by the Minister to be of a continuing nature within the meaning of the regulations made under this Act, the Minister, in respect of any subsequent application made by the landlord under section 74 in which the capital expenditure is found to be continuing, shall apply the percentage determined under clause 71 (1) (a) or (b) whichever is applicable, instead of the operating cost allowance determined under clause 75 (a).

77.—(1) Where a landlord claims to have experienced a Proof of financial loss or an economic loss or where the landlord may costs be entitled to an allowance for relief of hardship or an allowance in respect of chronically depressed rent, the landlord shall submit proof of the actual operating costs that the landlord has experienced in respect of the residential complex.

(2) Notwithstanding subsection (1), where, for the purposes of a prior order made under subsection 83 (1) of this Act or under subsection 131 (5) of the Residential Tenancies Act, the R.S.O. 1980, operating costs experienced in respect of the residential complex have been determined, and where the effective date of the first rent increase set out in that order is not more than three years prior to the effective date of the first rent increase applied for by the landlord in the current application, the landlord may elect not to submit proof of the operating costs that the landlord has experienced in respect of the residential complex.

Election by

(3) Where the landlord makes an election under subsection Determi-(2), the operating costs shall be determined by reference to of operating the amounts determined for the purposes of the prior order costs where referred to in subsection (2), increased in the prescribed manner.

78.—(1) In making findings concerning capital expendi- Allowance tures under clause 75 (b) or under clause 87 (1) (b), the Minetc. ister shall.

- allow interest on the expenditure, whether financed by borrowing or out of the landlord's own funds, or by a combination thereof, at the prescribed rates;
- (b) when the expenditure is financed by borrowing, allow the value of any guarantees given by or on behalf of the landlord to the lender; and

(c) allow the value of the landlord's own labour, if any, in carrying out the work involved in the capital expenditure.

Reduction for capital expenditures previously allowed R.S.O. 1980, c. 452 (2) Where, in an application under section 74 or 86, the landlord claims a capital expenditure for the replacement of an item allowed as a capital expenditure in a previous order made under this Act or the *Residential Tenancies Act*, and where the capital expenditure allowed in the previous order was completed on or after the 1st day of August, 1985, the Minister shall reduce the total rent increase that would otherwise be justified in the application by the amount allowed in respect of the capital expenditure in the previous order.

Limitation on consideration of financing costs

79.—(1) In making findings concerning financing costs under clause 75 (b), the Minister shall consider increases in financing costs resulting from the landlord's purchase of the residential complex only to the extent necessary to prevent a financial loss by the landlord.

Relief of hardship

(2) Where an application is made by a landlord under section 74, if the revenue found in respect of the residential complex does not exceed the actual operating and financing costs by at least 2 per cent, the Minister may, where he or she considers it necessary to relieve the landlord from hardship, allow the landlord the additional revenue required to raise the revenue to not more than 2 per cent above those costs.

Limit on rent increase attributable to increased financing costs resulting from purchase of residential complex

(3) Where a landlord claims a financial loss arising out of an increase in the financing costs of the residential complex resulting from a purchase or purchases of the residential complex, the Minister, when determining the total rent increase for the residential complex, shall allow in the initial year (as the component of the total increase in rent determined by the Minister that is attributable to such increase in financing costs) not more than 5 per cent of the total of the last lawful rents that were charged for the residential complex and in subsequent years the amount allowed in respect thereof by the Minister in any such year shall not exceed 5 per cent of the total of the last lawful rents that were charged for the residential complex.

Definition

(4) For the purposes of subsections (1), (3) and (6), "purchase" means the acquisition of a residential complex, after the 31st day of December, 1979, by any means whatsoever and includes the acquisition, whether by way of transfer, assignment or otherwise, of an interest, in whole or in part, in an option to purchase or in any agreement to purchase a residential complex.

(5) Where the Minister allows a financial loss arising out of Limitation the circumstances set out in subsections (1) and (3), the Minis-on relief hardship ter shall not allow the additional revenue mentioned in sub- allowance section (2) except in the last year during which the financial loss is phased in, but then only where the amount attributable to the financial loss together with the amount allowed under subsection (2) does not exceed 5 per cent of the last lawful rents that were charged for the residential complex.

(6) Subsections (3) and (5) do not apply to the purchase of Where a residental complex, no part of which was occupied as a subss. (3, 5) do not apply rental unit before the 1st day of January, 1976, where,

- the purchase was from the original owner of the residential complex and the residential complex was constructed for the purpose of such a purchase; or
- (b) the building permit to construct the residential complex was issued on or before the 18th day of April, 1986, and the agreement to purchase was entered into on or before the 18th day of April, 1986.
- (7) In making findings concerning financial loss under Interest clause 75 (e), the Minister shall allow interest paid after the 1st day of August, 1985, at the prescribed rates on loans in respect of any financial loss incurred since the acquisition of the residential complex by the landlord, provided that where the financial loss arises out of an increase in financing costs resulting from a purchase or purchases or refinancing thereof in respect of the residential complex, the maximum allowed financing shall not exceed 85 per cent of the acquisition cost and only that portion of the interest paid on loans attributable to the maximum allowed financing shall be allowed.

80.—(1) The rate of return in respect of a residential com-Rate of plex, no part of which was occupied as a rental unit before the 1st day of January, 1976, and the building permit for the construction of which is issued,

- (a) on or before the <u>31st day of December</u>, <u>1986</u>, is 10 per cent; or
- (b) after the 31st day of December, 1986, is the threeyear moving average, as of the year in which the building permit is issued, of the Canada Bond rate for ten years and over plus 1 percentage point,

of the landlord's initial invested equity, including the principal portion of any debt not otherwise allowed, up to the amount of the acquisition costs of the residential complex, and capitalized financial losses.

Phase in of economic loss and financial loss

- (2) Where a landlord claims an economic loss in respect of a residential complex no part of which was occupied as a rental unit before the 1st day of January, 1976, the Minister shall allow in the initial and any subsequent year, as the amount attributable towards the elimination of <u>financial loss and</u> economic loss,
 - (a) in respect of a residential complex, the permit for the construction of which was issued on or before the 1st day of July, 1986, the greatest of,
 - (i) the amount required to eliminate the economic loss over a period of five years from the earliest effective date of rent increase set out in the first order made on an application under section 74,
 - (ii) 5 per cent of the gross potential rent for the preceding year or the total of the amount required to eliminate the economic loss, whichever is less, and
 - (iii) the amount required to eliminate the financial loss experienced in the preceding year; and
 - (b) in respect of a residential complex, the permit for which was issued after the 1st day of July, 1986, the lesser of.
 - (i) the total of the amount required to eliminate the economic loss and the financial loss together with the amounts otherwise justified in the application under section 74, and
 - (ii) the portion of that amount that will result in a maximum rent increase that does not exceed the highest of,
 - (A) the amount required to eliminate the financial loss experienced in the preceding year,
 - (B) 10 per cent of the gross potential rent for the preceding year, and

- (C) an amount that is three times the increase permitted under subsection 71 (1).
- 81. In making findings under clause 75 (h), the Minister Extent of shall consider a financing cost which is no longer borne only of financing to the extent of the amount that was previously allowed in cost no respect of that financing cost.

borne

82.—(1) In apportioning the total rent increase amongst Apportionthe rental units in the residential complex, the Minister may ment or total rent take into account the following matters:

increase

- 1. The rent schedule proposed by the landlord's application.
- 2. Variations, and the reasons therefor, in the rents being charged by the landlord for similar rental units within the residential complex.
- 3. The degree to which any capital expenditures the landlord has experienced or will experience in respect of the residential complex affect individual rental units in the residential complex.
- 4. Any other prescribed matter.

(2) In apportioning the total rent increase under subsection Equalization (1), the Minister may set the maximum rent that may be charged for a rental unit so that the landlord may achieve equalization of rents charged for similar rental units within the residential complex but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that rental unit in the twelve-month period immediately preceding the date of the rent increase.

(3) In setting the maximum rents to achieve equalization Maximum under subsection (2), the Minister may set a maximum rent lower than for a rental unit that is less than the rent currently being current rent charged for that rental unit.

83.—(1) Where the Minister has determined and appor- Order re tioned the total rent increase on an application made under rent section 74,

maximum chargeable for each unit

(a) the Minister shall order the maximum rent that may be charged for each rental unit in the residential complex that is under review and the earliest date that each may take effect; and

(b) the Minister may order that the landlord or tenant pay to the other any sum of money that is owed to the other by reason of the order of the Minister setting the maximum rent for a rental unit.

Minister may order increase less than statutory increase (2) Where a landlord has applied for a rent increase greater than the amount permitted by section 71, the Minister may, if his or her findings so justify, allow a rent increase of less than the amount permitted by section 71.

Where rent charged exceeds maximum rent (3) In any application under section 74, where the Minister finds that the rent being charged for any rental unit exceeds the maximum rent for that rental unit, the Minister shall apply any rent increase that is otherwise justified, not to the rent currently being charged for the rental unit, but to the maximum rent for that rental unit.

Time for making order (4) Subject to subsection (5), the Minister shall make an order in respect of any application under this section not later than fifteen days before the effective date of the first rent increase applied for in the application.

Extension of time for making order

(5) Where it is not possible in the circumstances for the Minister to make an order in respect of any application within the time set out in subsection (4), the Minister shall notify in writing the parties to the application of the reason why it is not possible and of the date on or before which the order will be made.

Application by landlord for equalization of rents **84.**—(1) Without bringing an application under section 74, a landlord may make an application in the prescribed form to the Minister for an order apportioning the total rent charged in respect of a residential complex amongst the rental units situate therein, for the purpose of varying the rents so as to achieve equalization of rents charged for similar rental units within the residential complex.

Time for making application (2) An application under subsection (1) shall be made at least ninety days before the effective date of the first intended variation in rent as set out in the application.

Apportioning of rents charged to achieve equalization (3) Where the Minister is satisfied in an application made under this section that the rents ought to be equalized, the Minister shall set the rent that may be charged for any rental unit so that the landlord may achieve equalization of the rents charged for similar rental units within the residential complex, but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that

rental unit in the twelve-month period immediately preceding the date or dates of the rent increase.

(4) In setting the rents to achieve equalization under sub-Rent set section (3), the Minister may set a rent that may be charged curent for a rental unit at an amount that is less than the rent cur-rent rently being charged for that rental unit.

(5) Where the Minister has determined and apportioned Order re the rent charged amongst the rental units in the residential complex, the Minister shall order the percentage, if any, by achieve which the rent charged for a rental unit may be varied from the amount that would otherwise be the maximum rent for that rental unit and the date or dates on which such variation may take effect.

variation in equalization

85.—(1) Within two years of the effective date of the first Application rent increase set out in an order made under subsection 83 (1), a landlord or a tenant may apply in the prescribed to financial form to the Minister for an adjustment to the financial loss or loss, economic economic loss allowed in the order or to the extraordinary loss or operating costs allowed in the order, on the basis that the operating costs used in the calculation of the financial loss, economic loss or extraordinary operating costs were substantially higher or lower than the operating costs actually experienced in respect of the residential complex in a subsequent year.

adjustment extraordinary operating costs allowed

(2) In an order made by the Minister on an application Order re under subsection (1), the Minister shall order the maximum rent rent that may be charged for each rental unit in the residential chargeable complex that is under review and the earliest date that each each unit may take effect, provided that the earliest such date is not earlier than the day the application was made.

86.—(1) Where a landlord desires to increase the rent that Part may be charged for one or more rental units in a residential complex by more than the amount permitted by section 71 because of capital expenditures the landlord has experienced or will experience in respect of such rental units, the landlord and the tenants of such rental units may jointly apply in the prescribed form to the Minister at least sixty days before the effective date of the first intended rent increase for an order permitting the landlord to do so.

(2) Where the residential complex contains more than Application twelve rental units an application under subsection (1) shall 25 per cent not include the tenants of more than 25 per cent of the rental of rental units in the residential complex.

Filing of capital cost revenue statement (3) The landlord and the tenants shall file with the Minister a capital cost revenue statement in the prescribed form together with all documents that the parties rely upon in support of the application, including any written representations, and such other materials as may be prescribed not later than forty days before the effective date of the first rent increase applied for.

Determination by Minister of rent increase for each unit

- **87.**—(1) Where an application is made by a landlord and one or more tenants under section 86, the Minister shall determine the rent increase for each rental unit which is subject to the application that is justified by,
 - (a) the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
 - (b) the findings of the Minister concerning capital expenditures that the landlord has experienced or will experience that affect each rental unit;
 - (c) the prescribed allowances for management and administration in respect of capital expenditures; and
 - (d) the findings of the Minister concerning matters prescribed.

Order re maximum rent chargeable for each unit (2) Where the Minister has determined the rent increase for each rental unit under subsection (1), the Minister shall order the maximum rent that may be charged for each rental unit under review and the earliest date that each may take effect.

Application for conditional determination respecting rate of return **88.**—(1) At any time before the first rental unit in a residential complex is <u>occupied</u>, a landlord may make an application in the prescribed form to the Minister for an order determining the treatment any proposed course of action that may affect the rate of return for the residential complex will receive on a subsequent application under section 74, and the Minister shall, by order, make any determination the Minister considers appropriate.

Subsequent application required (2) An order under subsection (1) is conditional on the landlord making a subsequent application in the prescribed form to the Minister to review the order in the light of the actual course of action taken by the landlord in relation to the matters determined.

(3) An application under subsection (2) shall be made not Time for later than twelve months after the day the first rental unit is subsequent occupied.

application

(4) In an order made on an application under subsection Variance or (2), the Minister may vary or confirm the order made under of conditional subsection (1).

determination

(5) A determination in an order made under subsection (1) Effect of has no force or effect except as varied or confirmed by an determination order made on an application under subsection (2).

89.—(1) Prior to making a capital expenditure in respect Application of a residential complex or any rental unit therein, the land-conditional lord may, or the landlord and the tenants of the rental units order concerned jointly may, apply in the prescribed form to the Minister for a conditional order under subsection (2).

(2) In an application under subsection (1), the Minister Order by shall consider the proposed capital expenditure and shall by order declare the amount that will be allowed in respect of the expenditure in a subsequent application made under subsection 74 (1) (whole building review) or subsection 86 (1) (part building review), and where on the subsequent application the actual expenditure is substantially higher or lower than the projected expenditure the amounts allowed shall be decreased or increased proportionately.

90. An order of the Minister on an application made Where under this Part may award a rent increase greater than that greater rent increase greater than that requested in the application and where the order does so, the awarded than maximum rent for each rental unit affected by the order will be established in accordance with the terms of the order, but the rent charged for any such rental unit during the twelvemonth period following the effective date of the rent increase set out in the order shall not exceed the amount that would have been established for that rental unit had the rent increase requested in the application been awarded.

rent increase applied for

91.—(1) In this section, "chronically depressed rent" Definition means the gross potential rent for a residential complex where.

the rent is more than 20 per cent below the gross potential rent for residential complexes that are comparable to the residential complex, in terms of number and type of rental units, quality and location: and

(b) the rate of return on the landlord's equity in respect of the residential complex is less than 10 per cent.

Allowance re chronically depressed rent

- (2) In an application made under section 74 not later than two years after the day this section comes into force in respect of a residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, where,
 - (a) the landlord has owned the residential complex throughout the period from the 1st day of November, 1982, to the day the application is made; or
 - (b) the landlord has acquired the residential complex by inheritance or through foreclosure proceedings from a previous landlord who had owned the residential complex throughout the period from the 1st day of November, 1982 to the date of its acquisition by the present landlord who in turn has owned it until the day the application is made,

and the Minister finds the gross potential rent is a chronically depressed rent, the Minister shall allow, in an order made under subsection 83 (1), an additional 2 per cent per year of the gross potential rent until the rent is no longer a chronically depressed rent.

Request for relief

(3) Where the Minister makes an order that provides for the allowance referred to in subsection (2), any tenant of a rental unit in the residential complex may make a request in the prescribed form to the Minister for relief from payment of the allowance.

Agreement providing for payment by Minister to landlord of allowance (4) If the Minister determines that the tenant making the request meets the prescribed criteria for relief, the Minister shall inform the landlord, who shall thereupon enter into an agreement containing the prescribed terms with the Minister that will provide for payment by the Minister to the landlord of that portion of the maximum rent for the affected rental unit that is attributable to the allowance referred to in subsection (2).

Where landlord fails to enter into agreement

(5) If the landlord fails to enter into the agreement referred to in subsection (4), the Minister shall order that the portion of the allowance referred to in subsection (2) that affects the maximum rent of the rental unit shall not be charged by the landlord and may provide in the order that the landlord repay to the tenant any amount that is owing to the tenant by reason of the order.

(6) Where a rental unit in a residential complex whose Where new gross potential rent is found to be a chronically depressed rent existing under subsection (2) becomes occupied by a new tenant or tenant where an existing tenant of the rental unit agrees in writing thereto, the landlord, with the written approval of the Minister and without making an application under section 74 but subject to section 70, may increase the rent charged for that rental unit to the amount the rent would be for that rental unit at the time the gross potential rent for the residential complex has reached the level at which it is no longer a chronically depressed rent.

consents

(7) Where on the application in the prescribed form of a Deterioration tenant or on the Minister's own motion the Minister finds a significant deterioration in the standard of maintenance and repair in respect of the rental unit or the residential complex in which it is situate has occurred after the date of the order mentioned in subsection (2), the Minister may order that the landlord no longer charge the allowance referred to in subsection (2) or any part thereof, or the increase in rent charged for a rental unit pursuant to subsection (6), and may declare the maximum rent that may be charged for the rental unit or units affected.

in standard maintenance and repair

(8) An application or motion under subsection (7) may not Time for be made after the expiry of twelve months from the date that application the rent for the rental unit is no longer chronically depressed.

92.—(1) An order made under this Part may provide for Phasing in of the phasing in over more than one year, in the prescribed manner, of any amount that is included (as a component of the total permitted rent increase) for the purpose of,

components total rent increase

- (a) eliminating a financial loss or an economic loss the landlord has experienced or will experience;
- (b) achieving equalization of rents charged for rental units within a residential complex;
- raising the gross potential rent for a residential complex to the level where the rent is no longer a chronically depressed rent within the meaning of section 91:
- (d) relieving the landlord from hardship under subsection 79 (2) or (5); or
- (e) recovering financing cost increases that are subject to phasing in under the prescribed rules,

and where provision is made for such phasing in, the Minister shall specify in the order the phased in amount for the initial year and the method of calculating the amount for any subsequent year or years in which the phased in amount is applicable.

Notice by Minister to landlord and entry in rent registry (2) The Minister shall calculate the phased in amount that is applicable in any year subsequent to the initial year and, not later than 120 days before the anniversary of the date of the first rent increase set out in the order, shall give notice in writing of the amount to the landlord who is affected and shall enter the phased in amount that is applicable for the year in the information recorded in the rent registry in respect of any rental unit that is affected thereby.

Notice to tenant

(3) The landlord shall include with a notice of rent increase given under section 5 any notice the landlord has received under subsection (2) that affects the amount of the rent increase set out in the notice given under section 5.

Increasing rent by phased in amount (4) In addition to the amount by which, under section 71, the landlord could increase the rent charged, the landlord may, without making an application under this Act, increase the rent for a rental unit by the phased in amount set out in the notice given under subsection (2) respecting that rental unit.

Decrease in financing costs
R.S.O. 1980, c. 452

93.—(1) Where a landlord has been awarded a rent increase under this Act or the *Residential Tenancies Act* that was justified, in whole or in part, by a rate increase in financing costs that took effect on or after the 1st day of August, 1985, if at the time the term of the mortgage or other instrument associated with the financing costs expires or is about to expire the Minister is of the opinion that the rate of interest required to be paid on a renewal or replacement of the mortgage or other instrument is lower by 1 per cent or more than the interest rate that justified the rent increase that was awarded, the Minister shall give notice thereof in writing to the landlord and the tenants of the residential complex that is affected.

Landlord to file documents with Minister

(2) Not later than thirty days after the receipt of a notice under subsection (1), the landlord shall file with the Minister all documents that are relevant to the financing costs that the landlord will experience following the expiry of the term of the mortgage or other instrument.

Order that maximum rent be not increased (3) Unless the landlord makes an application under section 74 within the time set out therein, the Minister may, on the Minister's own motion, determine the amount of rent increase

that is no longer justified by reason of the lower interest rate and may order that the maximum rent chargeable for each rental unit in the residential complex as of the date of the order be not increased for a period of time determined in the prescribed manner.

(4) In making the determination under subsection (3) of the Matters to be amount of increase that is no longer justified, the Minister Minister shall take into account only the matters in respect of which the Minister may make findings under clause 75 (h).

94.—(1) A tenant who desires to dispute an intended rent increase for his or her rental unit that does not exceed the amount that the landlord is permitted to charge under section 71 may make an application in the prescribed form to the Minister for an order requiring the landlord to reduce the amount of the rent increase.

Application by tenant disputing intended rent increase

(2) Where the intended rent increase includes a phased in amount under the authority of section 92 in addition to the amount the landlord is permitted to charge under section 71. the tenant may dispute in accordance with this section that portion of the intended rent increase that is composed of the amount the landlord is permitted to charge under section 71.

phased in added to statutory

(3) No rent increase shall be reduced under this section Exception when the rent increase results in a rent not exceeding the maximum permitted by an order by the Minister or the Board or by the Residential Tenancy Commission under the Residen- R.S.O. 1980, tial Tenancies Act, for the applicable rental unit.

c. 452

(4) An application under this section shall be made not later than sixty days before the effective date of the intended rent increase.

Time for application

(5) Where an application is made by a tenant under this section, in determining a rent increase for the rental unit, the Minister shall consider only the following matters:

Considerwhere tenant applies

- 1. Variations and the reasons therefor in the rent being charged by the landlord for similar rental units within the residential complex.
- 2. A change shown to have occurred in the standard of maintenance and repair or in the services and facilities provided that affects the rental unit.
- 3. The degree to which the rental unit complies with the maintenance standards established by the Residential Rental Standards Board.

Order setting maximum rent chargeable for the unit

- (6) Where the Minister has made a determination on the application,
 - (a) the Minister shall make an order setting the maximum rent that may be charged for the rental unit under review and the twelve-month period during which that maximum rent shall be in effect; and
 - (b) the Minister may order the landlord or tenant to pay to the other any sum of money that is owed to the other by reason of the decision of the Minister setting the maximum rent for the rental unit.

Application by landlord for equalization of rents

(7) Where a tenant makes an application under subsection (1) on the grounds set out in paragraph 1 of subsection (5), the landlord may, not later than thirty days from the day the tenant's application was filed, make an application to the Minister under subsection 84 (1).

First date of intended variation

(8) Notwithstanding subsection 84 (2), the first date of intended variation in rent in a landlord application under subsection 84 (1) as provided in subsection (7) shall be the effective date of the rent increase disputed by the tenant in the application under subsection (1).

Tenant not liable to pay illegal rent increase <u>95.</u>—(1) No tenant is liable to pay any rent increase in excess of that permitted to be charged under this Act.

Remedy

(2) Where, on the application in the prescribed form of a tenant, the Minister determines that the landlord has charged the tenant an amount of rent that is in excess of that permitted by this Act or Part XI of the Residential Tenancies Act or by The Residential Premises Rent Review Act, 1975 (2nd Session), the Minister,

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

- (a) shall by order declare the maximum rent that may be charged for the rental unit concerned and the earliest date the maximum rent may take effect; and
- (b) where any excess rent paid by the tenant to the landlord is owed by the landlord to the tenant, shall, subject to subsection 13 (4), order the landlord to pay the excess rent owing to the tenant.

Where excess rent not to be repaid (3) Notwithstanding subsection (2), the Minister shall not make an order for the payment of excess rent charged for a rental unit prior to the 1st day of August, 1985, where the sum of the excess rent and the lawful rent for the rental unit does not exceed the rent that could have been charged for the rental unit in the period when the excess rent was paid, if, to

the amount charged for the rental unit on the 29th day of July, 1975, or at the earliest time thereafter for which the rent charged is known, is added all increases permitted under The Residential Premises Rent Review Act, 1975 (2nd Session) and Part XI of the Residential Tenancies Act.

(2nd Sess.), R.S.O. 1980, c. 452

96. Where a landlord makes an application under section Consequences 74. 86 or 89, the Minister may refuse to recognize all or part of maintaining of the capital expenditures or proposed capital expenditures residential claimed by the landlord where in the opinion of the Minister such expenditures are substantial and became necessary as a result of the landlord's ongoing deliberate neglect in maintaining the residential complex or any rental unit therein.

of neglect in complex or rental unit

97.—(1) In this section.

Definitions

"basic unit rent" means the amount of rent charged for a rental unit exclusive of any separate charges;

"separate charges" means the amounts of rent charged separately for any service, facility, privilege, accommodation or thing that the landlord provides for the tenant in respect of the tenant's occupancy of the rental unit.

(2) In any order under this Act in which the Minister sets Minister may out or declares the maximum rent that may be charged for a set out or declare basic rental unit, the Minister may separately set out or declare the unit rent and maximum basic unit rent and the maximum separate charges.

set out or separate

(3) Notwithstanding subsection 82 (2) or 84 (3), an order of Immediate the Minister made under subsection 83 (1) or 84 (5) may pro- equalization of separate vide for the immediate equalization of separate charges for charges parking spaces or other separate charges as may be prescribed.

(4) Notwithstanding anything in this Act, where a landlord Adding or and tenant agree that the landlord will provide any additional, or discontinue the provision of any, parking spaces, or any facilities, etc. other service, facility, privilege, accommodation or thing as may be prescribed, in respect of the tenant's occupancy of a rental unit, the maximum rent which may be charged for the rental unit shall be increased or decreased in the prescribed manner.

services,

(5) Where the Minister by order under subsection 13 (3) Coerced determines that an agreement under subsection (4) has been not agreement entered into as a result of some form of coercion, the agree-enforceable ment is not enforceable.

Not increase for purposes of s. 70

(6) An increase in rent charged in accordance with this section does not constitute an increase in rent charged for the purposes of section 70.

Where rental unit not rented for some time again becomes rented

98. Where a rental unit that has been rented at any time on or after the 29th day of July, 1975, has subsequently been not rented for any period of time and then again becomes rented, the maximum rent shall be the amount the landlord would have been entitled to charge if the unit had been rented during the period it was not rented and the landlord had given notice or notices of rent increase in the amount permitted by this Act, *The Residential Premises Rent Review Act*, 1975 (2nd Session) or Part XI of the Residential Tenancies Act.

1975 (2nd Sess.), c. 12 R.S.O. 1980, c. 452

Where rental unit rented for first time

99. The rent charged by a landlord for a rental unit when the unit is rented for the first time on or after the 29th day of July, 1975, shall be deemed to be the maximum rent for that unit as of the date it so becomes rented for the first time, except as otherwise provided in the regulations made under this Act.

Additional charges prohibited

- **100.**—(1) No landlord, or any person acting on behalf of the landlord shall, directly or indirectly, in respect of any rental unit,
 - (a) collect or attempt to collect from a tenant or prospective tenant of the rental unit any fee, premium, commission, bonus, penalty, key deposit or other like amount of money;
 - (b) require or attempt to require a prospective tenant to pay any consideration for goods or services as a condition for granting the tenancy, in addition to the rent the tenant is lawfully required to pay to the landlord; or
 - (c) rent any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent the landlord lawfully may charge for the rental unit.

Idem

- (2) No tenant or any person acting on behalf of the tenant shall, directly or indirectly,
 - (a) sublet a rental unit for a rent that is greater than the rent that is lawfully charged by the landlord for the rental unit;

- (b) sublet any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent that is lawfully charged by the landlord for the rental unit;
- (c) collect or attempt to collect from any tenant or prospective tenant any consideration, fee, premium, commission, bonus, penalty, key deposit or other like amount of money, for subletting the rental unit or any portion thereof, for assigning a tenancy agreement for the rental unit or for otherwise parting with possession of the rental unit; or
- (d) require or attempt to require a prospective subtenant or assignee to pay any consideration for goods or services as a condition for the sublet or assignment in addition to the rent the subtenant or assignee is lawfully required to pay to the tenant or landlord.

PART VII

APPEALS

101.—(1) A landlord or a tenant directly affected by an Appeal from order may, within thirty days of the giving of the order of the Minister Minister, appeal any order of the Minister disposing of an application made under this Act, or an order made on the Minister's own motion, by filing a notice or notices of appeal in the prescribed form with the Board, together with any documents that the party appealing relies upon in support of the appeal and which were not filed with the Minister on the application.

(2) The landlord and any tenant of a rental unit affected by Appeal of an order made under section 87 or an order made pursuant to review order a joint application under section 89 may appeal the order jointly or individually.

(3) Where a notice of appeal is filed with the Board, a copy | Record of the notice shall be given by the Board to the Minister who shall thereupon forward to the Board,

- (a) the original or a true copy of the application or notice given under subsection 28 (1);
- (b) the original or a true copy of all documents and material filed in respect of the application or notice given under subsection 28 (1); and

(c) a certified copy of the order appealed from together with the summary of reasons for the order.

Filing of documents, etc., by respondent

(4) Where any person has filed a notice of appeal, the other parties to the appeal shall, within thirty days of the filing of the notice of appeal, file with the Board the documents that the parties intend to rely upon at the hearing of the appeal and which were not filed with the Minister on the application or in response to a notice given under subsection 28 (1).

Notice to parties

(5) After receiving a notice of appeal under subsection (1), the Board shall give a notice to the parties stating the date, place and time when the appeal will be heard.

Issues may be heard together (6) Where several different appeals have been made to the Board, and the Board is of the opinion that it would be appropriate to determine the issues raised by the appeals together, the Board may hear and determine the issues in dispute at a common hearing.

Issues may be heard separately (7) Where the Board is of the opinion that it would be appropriate to deal with some of the issues raised by an appeal at separate hearings, the Board may direct that some of the issues be dealt with separately and may set additional hearing dates for the determination of those issues.

Issues on appeal limited <u>102.</u>—(1) On the hearing of an appeal, the issues will be limited to those raised in the initial application, or raised in a matter brought on by the Minister's own motion, unless the Board otherwise allows.

Agreement to further limit issues (2) Where all the parties to an appeal agree in writing, the Board may further limit the issues of the appeal to those issues agreed upon by the parties.

Evidence

(3) On the hearing of the appeal, the Board shall hear any evidence that is relevant to the issues, whether or not the evidence was tendered or was available on the initial application.

Burden of proof

(4) On the hearing of the appeal, the burden of proof lies on the party who made the initial application, or in the case of an appeal from an order made on the Minister's own motion, on the party bringing the appeal.

Hearing by single member <u>103.</u>—(1) Subject to subsection (2), an appeal shall be heard by a single member of the Board.

Hearing by panel of three Board members

(2) The chairman shall assign a panel of three members of the Board to hear an appeal where any party to the appeal files a request in the prescribed form with the Board not later than thirty days after the day the notice of appeal is filed.

(3) Where, before the hearing of an appeal has com- Withdrawal menced, a party to the appeal who has filed a request under for panel subsection (2) files with the Board a withdrawal of the request of three in the prescribed form, the appeal may, with the consent of the Board the Board, be heard by a single member of the Board.

104.—(1) Where any party to an appeal files a request therefor in the prescribed form with the Board or where the Board on its own initiative decides to do so, the Board may direct the parties to attend a pre-hearing conference, to be conducted by a single member of the Board, to discuss,

Pre-hearing conference

- (a) the issues to be dealt with on the hearing of the appeal;
- (b) whether any person ought to be added or removed as a party to the appeal;
- (c) the rental units affected by the appeal;
- (d) where a request has been filed under subsection 103 (2), whether the appeal should be heard by one member or a panel of three members of the Board; and
- any procedural matter that arises or may arise in connection with the appeal.

(2) The member of the Board who conducts the conference Recommenmay make such written recommendations as he or she considers necessary or advisable arising out of the matters discussed at the conference and any such recommendations shall be placed on the Board's record file pertaining to the appeal.

(3) Any party to the appeal is entitled to examine the rec- Examinaommendations made under subsection (2) and may submit recommendarepresentations in respect thereof to the Board at the hearing tions of the appeal.

(4) The member of the Board who conducts the pre-hearing Board conference shall not hear the appeal or be a member of the to panel that hears the appeal.

member not hear appeal

(5) Notwithstanding subsection 105 (1), the Statutory R.S.O. 1980, Powers Procedure Act does not apply to a pre-hearing conferto apply ence held under this section.

Application of R.S.O. 1980, c. 484 Of decision.

105.—(1) The Statutory Powers Procedure Act applies to proceedings by the Board in the exercise of a statutory power of decision.

Deemed compliance

R.S.O. 1980,

(2) The giving to a party of a copy of a notice of appeal to the Board shall be deemed to be compliance with section 8 of the *Statutory Powers Procedure Act*.

c. 484 Procedure

<u>106.—(1)</u> Subject to the provisions of the *Statutory Powers Procedure Act*, and except as otherwise provided for by this Act, the Board may determine its own procedure for the conduct of hearings.

Policy guidelines, etc., available to public (2) All policy guidelines or rules of procedure made by the Board under subsection (1) for the conduct of hearings shall be made available for examination by the public.

Matters Board to consider

- <u>107.</u>—(1) In addition to any material, evidence or information submitted to the Board on an appeal, in hearing any appeal, the Board may consider,
 - (a) any matter the Minister was entitled to consider on the application;
 - (b) any material and documents submitted to the Minister on the application; and
 - (c) such other matters as it deems necessary or advisable for the purpose of dealing with the appeal.

Board may investigate, etc.

- (2) The Board, in respect of any appeal, may,
 - (a) conduct any enquiry or inspection of documents or premises that the Board considers necessary; and
 - (b) question any person by telephone or otherwise.

Additional material

<u>108.</u>—(1) The Board may direct any party to the appeal to file such additional material as the Board considers necessary and the other parties shall have an opportunity to examine the additional material and to explain or refute it.

Where additional material not filed

- (2) Where any party to the appeal fails to comply with a direction of the Board under subsection (1), the Board may,
 - (a) in the case of the appellant, refuse to make an order allowing the appeal or that part of the appeal relating to the failure to comply with the direction; and

- (b) in the case of any other party to the appeal, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.
- 109. At the hearing, the Board may question the parties Board may who are in attendance and any witnesses with a view to determining the truth concerning the matters in dispute.

110. In making its determination, the Board may consider Other any relevant information obtained by the Board in addition to information the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

- 111. Upon completion of a hearing, the Board shall by Order of Board order.
 - (a) affirm the order of the Minister;
 - (b) vary the order of the Minister; or
 - (c) substitute its own order for the order of the Minister.

and shall forthwith give a copy of the order to the parties to the appeal, together with reasons in writing for the order.

112. Where, within one year of the date of an order of the Power to Board, the member, or panel of members, of the Board who made the order is of the opinion that a serious error has been made, the member or panel of members may, on the member's or panel's own motion, rehear any appeal and may affirm, rescind, amend or replace the order.

113. An order of a Board member or an order of the Order of majority of the members of a panel of Board members shall majority be deemed to be an order of the Board.

of panel deemed order of Board

114. Where a member of a panel of Board members that Decisions by is assigned to hear an appeal ceases for any reason to be a members of member of the Board,

remaining panel of Board members

(a) before the Board has made an order in respect of the appeal, the remaining two members of the panel may complete the hearing and make the order of the Board: or

(b) after the Board has made an order in respect of the appeal, the remaining two members of the panel may, in the circumstances set out in section 112, decide to rehear the appeal and those two members, together with a third member appointed by the chairman may, after holding the rehearing, affirm, rescind, amend or replace the order,

but if the two members do not agree,

- (c) on the order to be made in the case mentioned in clause (a), the appeal shall be reheard before a new panel of Board members; or
- (d) on whether to rehear the appeal in the case mentioned in clause (b), a rehearing shall not be held.

Appeal to Divisional Court 115.—(1) Any party to an appeal under section 101 may, on a question of law, appeal an order of the Board to the Divisional Court.

Board entitled to be heard on appeal (2) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal under this section.

Power of Divisional Court on appeal

- (3) Where an appeal is brought under subsection (1), the Divisional Court shall hear and determine the appeal and may,
 - (a) affirm, rescind, amend or replace the decision or order; or
 - (b) remit the matter to the Board with the opinion of the Divisional Court,

and may make,

- (c) any other order in relation to the matter that it considers proper; and
- (d) any order, with respect to costs, that it considers proper.

Orders not stayed pending appeal **116.** An appeal from an order of the Minister or the Board does not stay the order pending the hearing of the appeal.

PART VIII

LICENSING OF RESIDENTIAL TENANCY CONSULTANTS

117.—(1) The Minister may grant upon payment of the Licence as prescribed fee a licence to every person whom the Minister, in resident tenancy accordance with the prescribed procedures and criteria, con-consultant siders qualified to act as a residential tenancy consultant and in accordance with the prescribed procedures may refuse, suspend or revoke any such licence.

(2) No person, for a fee, shall represent or appear as agent Licence for a landlord or a tenant in any proceedings under this Act unless the person.

required

- (a) is licensed under this Part as a residential tenancy consultant; or
- (b) is exempted by the regulations from the requirement to be licensed under this Part.
- (3) Any agreement that provides for the payment of a fee Where agreement to to a person, other than one who is licensed or exempt as mentioned in subsection (2), for representing or appearing as an agent for a landlord or a tenant in any proceedings under this Act is void.

PART IX

MISCELLANEOUS

118. The Lieutenant Governor in Council may make regu-Regulations lations.

- prescribing forms of applications to the Minister 1. and material to be furnished in respect of the application:
- 2. prescribing the form of a notice of appeal to the Board:
- prescribing procedural and interpretative rules and policies to be observed by the Minister and the Board in the interpretation and administration of this Act or when exercising any power or discretion conferred under this Act:
- prescribing, for the purposes of clause 4 (3) (a), rental units to which this Act applies;

- 5. prescribing, for the purposes of section 5, the form of the notice of a rent increase;
- 6. prescribing, for the purposes of clause 13 (3) (d), matters of concern in respect of which the Minister may make a determination;
- <u>7.</u> prescribing, for the purposes of subsection 21 (5), rules for the computation of time;
- <u>8.</u> prescribing, the form of the notice mentioned in subsection 28 (1);
- prescribing, for the purposes of subsection 33 (2), the form of a summary of reasons for an order of the Minister;
- 10. prescribing, for the purposes of section 53, fees for the furnishing of copies of forms, notices or documents;
- 11. prescribing, for the purposes of subsection 56 (1), the form of a request for information from the rent registry;
- 12. prescribing, for the purposes of subsection 56 (1), rules for limiting the information recorded in the rent registry that shall be furnished to any person on request;
- 13. prescribing, for the purposes of subsection 56 (2), fees for the furnishing of information from the rent registry;
- 14. prescribing, for the purposes of subsection 57 (1), the form of the statement to be filed in connection with the rent registry;
- 15. prescribing, for the purposes of clause 57 (2) (a), the date for filing a statement under subsection 57 (1);
- 16. prescribing, for the purposes of subsection 58 (1), other information to be set out in the statement filed under subsection 57 (1);
- <u>17.</u> prescribing the percentage mentioned in subsections 59 (2) and (3);

- 18. prescribing, for the purposes of section 60, the form of notice to be given by the Minister in respect of information recorded in the rent registry;
- 19. prescribing, for the purposes of subsections 63 (4) and (5), the form of justification;
- 20. prescribing, for the purposes of subsection 74 (4), the form of a cost revenue statement;
- 21. prescribing, for the purposes of clause 75 (a) and clause 87 (1) (a), the operating cost allowance;
- 22. prescribing, for the purposes of clause 75 (d) and clause 87 (1) (c), the allowances for management and administration in respect of capital expenditures;
- 23. prescribing, for the purposes of clause 75 (j), matters in respect of which the Minister may make findings;
- 24. prescribing, for the purposes of clause 78 (1) (a), interest rates on capital expenditures;
- 25. prescribing, for the purposes of subsection 79 (7), interest rates to be allowed;
- 26. prescribing, for the purposes of paragraph 4 of subsection 82 (1), matters to be taken into account by the Minister;
- 27. prescribing, for the purposes of subsection 86 (3), the form of a capital cost revenue statement;
- 28. prescribing, for the purposes of subsection 91 (3), the form of a request for relief;
- 29. prescribing, for the purposes of subsection 91 (4), the criteria to be met to qualify for relief;
- 30. prescribing, for the purposes of subsection 91 (4), the terms of an agreement to be entered into under that subsection;
- <u>31.</u> prescribing, for the purposes of section 92, the manner of phasing in amounts;

- 32. prescribing, for the purposes of subsection 93 (3), the manner of determining the period of time the maximum rent chargeable may not be increased;
- 33. prescribing, for the purposes of subsection 97 (3), separate charges which may be equalized immediately;
- 34. prescribing, for the purposes of subsection 97 (4), the manner in which the rent may be increased or decreased;
- <u>35.</u> prescribing, for the purposes of section 99, the method of determining maximum rent;
- 36. prescribing persons or classes of persons that are exempt from the requirement to be licensed under Part VIII;
- <u>37.</u> prescribing, for the purposes of subsection 117 (1), criteria for licensing a person as a residential tenancy consultant;
- <u>38.</u> prescribing, for the purposes of subsection 117 (1), fees for licences under Part VIII;
- 39. prescribing, for the purposes of subsection 117 (1), procedures to be followed where a licence is proposed to be refused, suspended or revoked;
- <u>40.</u> prescribing, for the purposes of subsection 121 (1), the allowed amount of a contingency fee;
- 41. prescribing, for the purposes of constructing the Building Operating Cost Index, the Table setting out the weighting and components thereof;
- 42. defining any word or expression used in this Act that has not already been expressly defined in this Act;
- 43. prescribing anything that by this Act is to be or may be prescribed.

119. Substantial compliance with the requirements of this Act respecting the contents of forms, notices or documents is sufficient unless the Minister or the Board, as the case may be, is of the opinion that it would result in unfairness to any person.

Substantial compliance with forms, etc., sufficient

120. Any person may seek to secure and enforce the Enforcement rights established by this Act and may, without let or hin- or rights and participation drance, organize or participate in an association the purpose in organiof which is to secure and enforce the rights established by this Act.

of rights and

Bill 51

121.—(1) No agent who represents a landlord or a tenant Contingency in any proceedings under this Act or who assists a landlord or tenant in any matter arising under this Act shall charge or take a fee based on a proportion of any amount which has been or may be recovered, gained or saved in part or in whole through the efforts of the agent, where the proportion exceeds the prescribed amount.

fee limited

(2) Any agreement which provides for a fee prohibited in Contingency subsection (1) is void.

agreement

122.—(1) Any person who knowingly,

Offences

- (a) fails to obey an order of the Minister or the Board;
- (b) furnishes false or misleading information in any application, document, written representation or statement to the Minister under this Act or in any proceedings before the Board;
- increases the rent charged for a rental unit where less than twelve months has elapsed since the date of the last rent increase:
- (d) increases the rent charged for a rental unit by more than the amount referred to in section 71 unless authorized by the Minister or the Board to do so;
- charges a higher rent for a rental unit than that permitted under an order of the Minister or the Board;
- charges an amount that is in contravention of sec-(f) tion 100:
- fails to file with the Minister the statement required (g) under section 57, in respect of the rent registry; or
- charges or takes a fee that is in contravention of subsection 121 (1),

and every director or officer of a corporation who knowingly concurs in the prohibited act is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

Where corporation convicted

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided in subsection (1).

Limitation

(3) Proceedings shall not be commenced, in respect of an offence under subsection (1), after one year after the date on which the offence was, or is alleged to have been, committed.

Monetary sums rounded to nearest dollar 123. Wherever under this Act a sum of money is required or permitted to be set out or expressed, the sum may be rounded to the nearest dollar and set out or expressed accordingly.

Proof of documents, etc.

124. In any prosecution for an offence under this Act, the production of any certificate, statement or document given to the Minister or to the Board under this Act or the regulations thereunder, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by such person or on such person's behalf, shall be received as *prima facie* proof that such certificate, statement or document was filed or delivered by or on behalf of that person or was made or signed by that person or on that person's behalf.

Moneys

- 125. The moneys required for administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature.
- 126.—(1) Clauses 134 (1) (c) and (d) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, are repealed.
- (2) Subsection (1) shall be deemed to have come into force on the 1st day of August, 1985.
- 127. Sections 60, 61, 70 to 73, 75 to 110, 114, 115, 117, 118, 120 to 133, clauses 134 (1) (a), (b), (f) and (g), subsections 134 (2) and (3) and subsection 135 (2) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, are repealed.
- 128. Section 7 of the Residential Complexes Financing Costs Restraint Act, 1982, as amended by the Statutes of Ontario, 1983, chapter 69, section 4, 1984, chapter 65, section 1 and 1985, chapter 15, section 4, is repealed and the following substituted therefor:

Repeal

7.—(1) This Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

(2) Despite subsection (1), this Act continues in force for Saving the purpose of hearing and making orders in respect of applications made to the Commission under section 126 of the Residential Tenancies Act on or before the day immediately R.S.O. 1980, preceding the day on which this Act is repealed by proclamation of the Lieutenant Governor and not finally disposed of by the Commission on or before that day, and to appeals therefrom.

129.—(1) Notwithstanding the repeal of the provisions Certain mentioned in section 127, those provisions shall be deemed to be continued in force for the purposes only of continuing and continued finally disposing of the following matters:

in force for purposes

An application made under the Residential Tenan- R.S.O. 1980, cies Act before the day this section comes into force.

- An appeal of an order made under the Residential Tenancies Act.
- A court proceeding commenced before the day this 3. section comes into force to which the Residential Tenancy Commission is a party.
- 4. A court proceeding mentioned in subsection 84 (4) of the Residential Tenancies Act commenced before the day this section comes into force.

(2) An application under the Residential Tenancies Act Election to made before the day this section comes into force may, at any time before the hearing of the application has commenced, at this Act the written election of the applicant, be continued and finally R.S.O. 1980, disposed of as an application made under the corresponding provisions of this Act.

(3) For the purposes only of subsection (1), the Residential Residential Tenancy Commission shall continue and has all the powers Commission and jurisdiction conferred on it by the Residential Tenancies continued Act, and for that purpose all appointments of Commissioners purposes and Appeal Commissioners and designations of Commission- R.S.O. 1980, ers as members of the Board of Commissioners are confirmed c. 452 and continued until the expiration of the term of appointment or a day to be named by proclamation of the Lieutenant Governor, whichever is earlier.

Tenancy

Where appeal may be heard before single Appeal Commissioner

(4) Notwithstanding subsection 117 (7) of the *Residential Tenancies Act*, an appeal from an order made under subsection 129 (2) of that Act may be heard before a single Appeal Commissioner, who need not be a member of the Board of Commissioners.

Commencement **130.**—(1) This Act, except subsection 71 (1) and section 128, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 128 comes into force on the day this Act receives Royal Assent.

Idem

(3) Subsection 71 (1) shall be deemed to have come into force on the 1st day of August, 1985.

Short title

131. The short title of this Act is the Residential Rent Regulation Act, 1986.

SCHEDULE A

(Clause 71 (1) (b))

The formula for calculating the Residential Complex Cost Index for the purposes of clause 71 (1) (b) is the greater of,

- (a) 2 per cent; or
- (b) 2 per cent plus 2/3 of the percentage increase in the three-year moving average of the Building Operating Cost Index, rounded to the nearest 1/10th of 1 per cent.

The Building Operating Cost Index shall be constructed in accordance with the weighting and components set out in the prescribed Table, with the weighting adjusted annually in relation to changes, based on a three-year moving average, in the components.

SCHEDULE B

(Clauses 75 (a) and 87 (1) (a))

The formula for calculating the operating cost allowance for the purposes of clauses 75 (a) and 87 (1) (a) is,

Operating Cost Allowance = Residential Complex Cost Index less 1 percentage point X the gross potential rent for the residential complex for the month immediately preceding the effective date of the first rent increase applied for X 12.









Bill 51

(Chapter 63 Statutes of Ontario, 1986)



An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

The Hon. A. Curling

Minister of Housing

1st Reading June 5th, 1986

2nd Reading July 7th, 1986

3rd Reading December 3rd, 1986

Royal Assent December 4th, 1986



Bill 51 1986

An Act to provide for the Regulation of Rents charged for Rental Units in Residential Complexes

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

- "Board" means the Rent Review Hearings Board established under this Act;
- "economic loss" means the loss experienced by a landlord whose rate of return on the landlord's invested equity and capitalized losses in respect of a residential complex is less than the rate of return made applicable to that residential complex by subsection 80 (1), but does not include a financial loss;
- "extraordinary operating cost" means a change in the cost of one item in the Building Operating Cost Index that the landlord has experienced or will experience,
 - (a) that creates a variance of at least 50 per cent from the Building Operating Cost Index component, or
 - (b) that would justify a variance in revenue of at least 1 per cent from the amount resulting from application of the Building Operating Cost Index component;
- "financial loss" means the loss experienced by a landlord whose total costs that have been or will be experienced and that are allowed in an application made under this Act in respect of a residential complex for an annual accounting period exceed the revenue for the same period;
- "landlord" includes the owner, or other person permitting occupancy of a rental unit, and his or her heirs, assigns, personal representatives and successors in title and a per-

son, other than a tenant occupying the rental unit, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

- "mail" means first-class, registered or certified mail;
- "maximum rent" means the lawful maximum rent which could be charged for a rental unit had all permissible statutory or other increases which could have been taken on or after the 1st day of August, 1985, been taken;
- "Minister" means the Minister of Housing or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;
- "Ministry" means the ministry of the Minister;
- "mobile home" means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed;
- "mobile home park" means the rental units, and the land, structures, services and facilities of which the landlord retains possession and that are intended for the common use and enjoyment of the tenants of the landlord, where two or more occupied mobile homes are located for a period of sixty days or more;

R.S.O. 1980, c. 91

- "non-profit co-operative housing corporation" means a corporation incorporated without share capital under the Co-operative Corporations Act or any predecessor thereof or under similar legislation of Canada or any province, the main purpose and activity of which is the provision of housing for its members, and the charter or by-laws of which provide that,
 - (a) its activities shall be carried on without the purpose of gain for its members,
 - (b) on dissolution, its property after payment of its debts and liabilities shall be distributed to nonprofit or charitable organizations,
 - (c) housing charges, other charges similar to rent, or any other charges payable by members are decided by a vote of the members or of a body duly elected

or appointed by the members, or a committee thereof.

(d) termination of occupancy rights may be brought about only by a vote of the members or of a body duly elected or appointed by the members, or a committee thereof, and that the member whose occupancy rights are terminated has a right to appear and make representations prior to such vote:

"prescribed" means prescribed by the regulations made under this Act:

"rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental unit. whether or not a separate charge is made for such services and facilities, privilege, accommodation or thing but does not include.

- (a) any amount required by the Retail Sales Tax Act to R.S.O. 1980, be collected from a tenant by a landlord, or
- (b) any amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord to a municipality in respect of a mobile home, or a home which is a permanent structure, owned by a tenant;

"rental unit" means any living accommodation, site for a mobile home or site on which a single family dwelling is a permanent structure used or intended for use as rented residential premises and includes a room in a boarding house or lodging house;

"residential complex" means a building, related group of buildings or mobile home park, in which one or more rental units are located, or a site or related group of sites on each of which site is located a single family dwelling which is a permanent structure and includes all common areas, services and facilities available for the use of residents of the building, buildings, park, site or sites;

"services and facilities" includes,

(a) furniture, appliances and furnishings,

- (b) parking and related facilities,
- (c) laundry facilities,
- (d) elevator facilities,
- (e) common recreational facilities,
- (f) garbage facilities and related services,
- (g) cleaning or maintenance services,
- (h) storage facilities,
- (i) intercom systems,
- (i) cablevision facilities,
- (k) heating facilities or services,
- (1) air-conditioning facilities,
- (m) utilities and related services,
- (n) security services or facilities;
- "statutory increase" means the amount by which the rent charged for a rental unit may be increased without application to the Minister under this Act or may have been increased without application under the Residential Tenancies Act or under The Residential Premises Rent Review Act, 1975 (2nd Session);

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

"subsidized public housing" means a rental unit rented to persons or families of low or modest income who pay an amount geared-to-income for that unit by reason of public funding provided by the Government of Canada, Ontario or a municipality, including a regional, district or metropolitan municipality, or by any agency thereof, pursuant to the National Housing Act (Canada), the Housing Development Act or the Ontario Housing Corporation Act;

R.S.C. 1970, c. N-10 R.S.O. 1980, cc. 209, 339

- "tenancy agreement" means an agreement between a landlord and a tenant for occupancy of a rental unit, whether writta, oral or implied;
- "tenant" means a person who pays rent in return for the right to occupy a rental unit and his or her heirs, assigns and personal representatives but does not include a person who has the right to occupy a rental unit by virtue of being a co-

owner of the residential complex in which the rental unit is situate or a shareholder of a corporation that owns the residential complex, and a sub-tenant is a tenant of the person giving the sub-tenant the right to occupy the rental unit.

2.—(1) This Act applies to rental units in residential com- Application plexes, despite any other Act and despite any agreement or waiver to the contrary.

(2) Where a provision of this Act conflicts with a provision Conflict of any other Act, except the Human Rights Code, 1981, the 1981, c. 53 provision of this Act applies.

(3) Notwithstanding subsection (1), where a provision in a written tenancy agreement between a landlord and a tenant conflicts with the provisions of this Act concerning the amount agreement of rent which may be charged for a rental unit, and where the tenancy agreement was entered into before the 2nd day of May, 1985, in respect of a rental unit which was, before the 1st day of August, 1985, exempt from Part XI of the Residen- R.S.O. 1980, tial Tenancies Act under clause 134 (1) (c), (d) or (e) of that Act, the provision in the agreement applies to the rental unit so long as the tenant who entered into the agreement remains the tenant of the rental unit.

provision in written

(4) Subsection (3) does not apply to a tenancy agreement Where that provides for the payment at the commencement of the term of the tenancy of a lump sum as the basic rent for the apply rental unit for a term of ten or more years and that includes provision for the payment by the tenant on a periodic basis of additional amounts related to the cost of maintenance of common areas and other miscellaneous expenses associated with the rental unit.

(5) Notwithstanding subsection (1), where a written agree- Agreement ment between a landlord and a tenant, entered into before the payment of day this section comes into force, contains a provision requirexcess rent ing the landlord to repay to the tenant any amount of rent that the landlord has charged in excess of that permitted by Part XI of the Residential Tenancies Act or by The Residential R.S.O. 1980, Premises Rent Review Act, 1975 (2nd Session), or permitting c. 452 the tenant to recover such an amount by deducting a sum Sess.), c. 12 from the tenant's rent for a number of rent payment periods, the provision applies notwithstanding anything to the contrary in this Act.

3. This Act is binding on the Crown.

Act binds Crown

4.—(1) This Act does not apply to,

Exemptions from Act

- (a) transient living accommodation provided in a hotel, motel, inn, tourist home or hostel;
- (b) living accommodation occupied as a vacation home for a seasonal or temporary period;
- (c) living accommodation, whether situate on or off a farm, where occupancy of the premises is conditional upon the occupant continuing to be employed on the farm;
- (d) living accommodation provided by a non-profit cooperative housing corporation to its members;
- (e) living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care;
- (f) living accommodation established to temporarily shelter persons in need;
- (g) living accommodation provided in connection with the purposes for which the institution is established by a hospital, a nursing home or a home for the aged;
- (h) living accommodation provided by an educational institution to its students or staff where,
 - (i) the living accommodation is provided primarily to persons under the age of majority, or
 - (ii) all major questions related to the living accommodation are decided after consultation with a council or association representing the residents,

unless the living accommodation has its own selfcontained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households;

 (i) living accommodation situate in a building or project used in whole or in part for non-residential purposes where the occupancy of the living accommodation is necessarily connected with the employment of the occupant in, or the performance by him or her of services related to, a non-residential business or enterprise carried on in the building or project;

- (j) premises occupied for business or agricultural purposes with living accommodation attached under a single lease unless the person occupying the living accommodation is a person other than the person occupying the premises for business or agricultural purposes, in which case the living accommodation shall be deemed to be a rental unit.
- (2) The Minister, on the application of a landlord or a ten-Order ant, or on the Minister's own motion, may make an order nonunder subsection 13 (3) declaring that the Act does not apply application to particular transient living accommodation provided in a suite hotel in accordance with the regulations made under this Act.

declaring of Act to suite hotel

(3) This Act, except sections 5 and 6, does not apply to,

Nonapplication, except for ss. 5, 6,

- a rental unit situate in a residential complex owned. operated or administered by or on behalf of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, except where otherwise prescribed, but where the tenant occupying the rental unit pays rent to a landlord which is not the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, this Act does apply;
- (b) a rental unit situate in a non-profit housing project, rents for which are subject to the approval of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof or situate in a non-profit co-operative housing project as defined in the *National Housing Act* (Canada):

R.S.C. 1970.

- a rental unit not otherwise exempt from this Act that is provided by an educational institution to a student or member of its staff except that, where there is a council or association representing the residents, the exemption does not apply in respect of a rent increase unless there has been consultation with the council or association respecting the increase:
- (d) a rental unit situate in a residential complex owned, operated or administered by a religious institution for a charitable use on a non-profit basis.

Subsidized public housing

(4) This Act does not apply to an increase in the amount geared-to-income paid by a tenant in subsidized public housing who is occupying a rental unit, other than a unit referred to in clause (3) (a) or (b), but this Act does apply to the unit itself.

PART I

NOTICE OF RENT INCREASES

Notice of rent increase

- 5.—(1) The rent charged for a rental unit shall not be increased unless the landlord gives the tenant a notice in the prescribed form setting out the landlord's intention to increase the rent and the amount of the increase, expressed both in dollars and as a percentage of the current rent, and of the current maximum rent, if it is higher than the current rent, intended to be made not less than ninety days before the end of,
 - (a) a period of the tenancy; or
 - (b) the term of a tenancy for a fixed period.

Increase void where no notice (2) An increase in rent by the landlord where the landlord has not given the notice required by subsection (1) is void.

Notice unnecessary for new tenant (3) Subsections (1) and (2) do not apply to a rent increase for a rental unit where the rent increase takes effect when a new tenant first occupies the rental unit under a new tenancy agreement.

Notice of rent increase deemed in compliance with R.S.O. 1980, c. 232, ss. 123, 129 (1)

(4) A notice of rent increase given in compliance with this section and section 21 or in compliance with subsection 60 (1) and section 99 of the *Residential Tenancies Act* shall be deemed to be and always to have been sufficient notice for the purposes of section 123 and subsection 129 (1) of the *Landlord and Tenant Act*.

Where tenant fails to give notice of termination

6.—(1) Where a tenant who has been given a notice of an intended rent increase under section 5 fails to give the landlord proper notice of termination under the *Landlord and Tenant Act*, the tenant shall be deemed to have accepted the amount of rent increase that does not exceed the amount allowed under this Act.

Deemed acceptance not to constitute waiver of tenant's rights (2) The deemed acceptance by a tenant of an increase in rent in the case mentioned in subsection (1) does not constitute a waiver of the tenant's rights to take whatever proceedings are available under this Act in respect of the rent that may be charged for a rental unit.

7. Where a notice of an intended rent increase has been Rent given under section 5, a rent increase up to the lesser of.

chargeable takes effect

- (a) the intended rent increase specified in the notice: and
- (b) the limit imposed by section 71,

may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

PART II

GENERAL

- 8. The Minister is responsible for the administration of Administration this Act.
- 9. The Minister may by order establish regions in Ontario Minister may for the purposes of this Act.

establish regions

10. All proceedings under this Act shall be held in the Proceedings region in which the residential complex in question is situate unless the Minister or the Board, as the case may be, otherwise directs

in region

11. The Minister shall,

Duties of Minister

- provide information and advice to the public on all residential tenancy matters including referral where appropriate to social or community services and public housing agencies;
- (b) investigate cases of alleged failure to comply with an order made under this Act or to comply otherwise with the provisions of this Act and, where the circumstances warrant, commence or cause to be commenced proceedings in respect of the alleged failure to comply;
- take an active role in ensuring, by any suitable method, including the making of grants, that landlords and tenants are aware of the benefits and obligations established by this Act; and
- (d) establish such committee or committees as the Minister considers advisable to periodically review and make recommendations, commencing in 1989, to

the Minister concerning the Residential Complex Cost Index and the Building Operating Cost Index.

Delegation

12. The Minister may in writing delegate any power or duty granted to or vested in the Minister under this Act to any officer or employee of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in the delegation.

Exclusive jurisdiction of Minister and Board

13.—(1) Subject to subsections (4) and (5), the Minister and, on an appeal or where a matter has been referred to it by the Minister, the Board, have exclusive jurisdiction to examine into and determine all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Minister and the Board.

Procedural and interpretative rules and policies (2) The Minister and the Board, in the interpretation and administration of this Act or when exercising any power or discretion conferred under this Act, shall observe such procedural and interpretative rules and policies as are prescribed.

Minister may determine application of Act, etc.

- (3) The Minister, on the application of a landlord or a tenant, or on the Minister's own motion, may make an order determining,
 - (a) whether this Act applies to a particular rental unit or residential complex;
 - (b) the rental units, common areas, services and facilities that are included in a particular residential complex;
 - (c) whether an agreement referred to in subsection 97 (4) has been entered into as a result of some form of coercion; and
 - (d) any other prescribed matter of concern respecting the application of this Act.

No order for payment over \$3,000

(4) In any proceedings under this Act, neither the Minister nor the Board shall make an order for the payment of money in excess of \$3,000, but where the Minister or the Board would be justified in making an order for the payment of money in excess of \$3,000, the person to whom the payment would otherwise be made may, by notice in writing in the prescribed form filed with the Minister or the Board, abandon the excess over \$3,000 and the Minister or the Board in that case may make an order for the payment of \$3,000 to the per-

son and the abandonment extinguishes all rights in respect of the excess.

(5) Where, under this Act, a person claims a sum of money Court in excess of \$3,000, he or she may institute proceedings therefor in any court of competent jurisdiction and the court may exercise any powers that the Minister or the Board could have exercised had the proceedings been before the Minister or the Board.

14.—(1) A board to be known as the Residential Rental Residential Standards Board, hereinafter called the Standards Board, is Standards established, composed of such number of members as the Board Lieutenant Governor in Council appoints.

(2) The Standards Board shall be assisted in the performance of its duties by such officers and employees of the Ministry as the Minister assigns for the purpose.

Assignment of staff to Standards

(3) The members of the Standards Board shall be paid such remuneration and expenses as the Lieutenant Governor from time to time determines.

(4) No action or other proceeding for compensation or Immunity for damages shall be instituted against the Standards Board or any member of the Standards Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

15.—(1) The Standards Board shall,

Duties of the Standards Board

- (a) recommend to the Minister the appropriate minimum maintenance standards that should be made applicable to residential complexes and the rental units located therein and appropriate standards relating to the health and safety of the occupants thereof:
- (b) recommend to the Minister the powers and duties that should be conferred or imposed on the Standards Board respecting the development and enforcement of appropriate maintenance standards for residential complexes and the rental units located therein and for standards relating to the health and safety of the occupants thereof;
- recommend to the Minister the form and content of such educational or other programs as will ensure

that landlords and tenants are made aware of the benefits conferred and obligations imposed by the provisions of this Act respecting maintenance standards and their enforcement:

- (d) recommend to the Minister methods of providing for recognition of the importance of dialogue between the landlord and the tenants occurring on a meaningful and timely basis regarding proposed capital expenditures in respect of a residential complex while at the same time acknowledging the rights and responsibilities of landlords to manage their buildings;
- (e) receive a copy of any order relating to a residential complex or any rental unit located therein,

1983, c. 1

- (i) issued by a property standards officer under a by-law passed under section 31 of the Planning Act, 1983 or a predecessor thereof or passed under any special Act respecting standards for maintenance and occupancy that is in force in a municipality, or
- (ii) made under the provisions of any general or special Act, or any by-law passed thereunder, respecting standards relating to the health or safety of occupants of buildings or structures,

and any notices of appeal from such an order;

(f) receive and investigate any written complaint from a current tenant of a rental unit respecting the standard of maintenance that prevails in respect of the rental unit or residential complex in which the rental unit is located, where minimum maintenance standards adopted by the Standards Board under the authority of subsection 16 (1) are in force in the area in which the residential complex is situate.

Where Standards Board receives copy of main-

(2) Where the Standards Board receives a copy of an order referred to in clause (1) (e), the Standards Board shall determine whether the standard or standards to which the order tenance order relates is or are substantial and if so may cause such investigation to be made as the Standards Board considers necessary to enable it to determine whether or not the order has been complied with in accordance with its terms, and if not, whether the non-compliance is substantial.

(3) Where the Standards Board determines under subsec- Report to tion (2) that substantial non-compliance with a substantial the Minister standard has occurred and is subsisting, the Standards Board shall give to the Minister a report in writing setting out the findings of the Standards Board in respect of the matter and shall at the same time give a copy of the report to the landlord of the residential complex and to the tenant of any rental unit affected thereby.

(4) Where the report received by the Minister under sub- Order that section (3) indicates that substantial non-compliance with a rent increase be not substantial standard has occurred and is subsisting, the Minis-collected ter, on his or her own motion, may order that any increase in the rent for a rental unit in the residential complex affected by the maintenance and occupancy order,

- (a) that will take effect on or after the date of the Minister's order; or
- (b) that took effect at any time in the nine-month period preceding the date of the Minister's order.

be not collected by the landlord until the Minister either receives a report from the Standards Board that the residential complex and any affected rental unit located therein are in substantial compliance with the provisions of the maintenance and occupancy order or so determines under subsection (8).

(5) Where the Minister makes an order under subsection Date after (4) to which clause (b) thereof applies, the order shall specify landlord may the date the report of the Standards Board is given to the not collect Minister under subsection (3) as the date on or after which the landlord may not collect an increase in rent.

rent increase

(6) Where the tenant of a rental unit affected by an order Order for of the Minister made under subsection (4) has paid to the repayment of rent increase landlord any amount of an increase in rent that is declared by the order not to be collected, the Minister shall order the landlord to repay to the tenant the amount of the increase in rent that was paid.

(7) An order made by the Minister under subsection (4) Collection of may provide that where a report from the Standards Board forfeited that the residential complex and the rental units situate therein are in substantial compliance with the provisions of the maintenance and occupancy order is not received by the Minister, or where the Minister does not so determine under subsection (8), within such period of time as the Minister specifies in the order, the right of the landlord to collect any increase in the rent for a rental unit situate in the residential

complex is forfeit and no increase in the rent for such a rental unit may be collected by the landlord except in respect of a period commencing after the day the Minister either receives such a report from the Standards Board or determines under subsection (8) that there is substantial compliance.

Notice to Minister of

(8) Where a landlord to whom an order has been given completion of under subsection (4) completes the work in respect of which the order was made, the landlord may give a notice to that effect to the Minister and thereupon or where for any other reason the Minister considers it desirable to do so, the Minister may inspect or cause to be inspected the work to determine whether there is substantial compliance with the maintenance and occupancy order for the purposes of subsection (4) or (7).

Matters taken into account by Minister

- (9) In deciding whether to make an order under subsection (4), or to include the provision authorized by subsection (7), the Minister shall take into account,
 - (a) the nature of the work required to be performed to comply with the maintenance and occupancy order and the history of the matter that is the subject of that order:
 - actual seasonal factors and financial constraints affecting the ability of the landlord to perform the required work; and
 - the availability of the persons and required to perform the required work.

Effect of order under R.S.O. 1980, c. 232, s. 96

(10) The Minister shall not make an order under subsection (4) where an order has been made under section 96 of the Landlord and Tenant Act and where compliance with that order would afford an adequate remedy to the tenant of any affected rental unit.

Inspection

(11) Subject to subsection (12), any member of the Standards Board and any employee of the Ministry assigned by the Minister to assist the Standards Board in the exercise of its powers under this Act may, on giving adequate prior written notice of the intention to do so, at reasonable times and upon producing proper identification, enter and inspect any residential complex or rental unit located therein.

Entry into dwelling place R.S.O. 1980, c. 400

(12) Except under the authority of a search warrant issued under section 142 of the Provincial Offences Act, a member of the Standards Board or an employee of the Ministry referred to in subsection (11) shall not enter any room or place actually

used as a dwelling without requesting and obtaining the consent of the occupier, first having informed the occupier that the right of entry may be refused and entry made only under the authority of a search warrant.

16.—(1) The Standards Board shall develop and adopt Adoption of such minimum maintenance standards as it considers appropriate to make applicable to residential complexes and the standards rental units located therein that are situate in an area,

- (a) where no by-law passed under section 31 of the Planning Act, 1983 or a predecessor thereof or 1983, c. 1 passed under any special Act respecting standards for maintenance and occupancy is in force;
- (b) where, although such a by-law is in force, the maintenance standards set out in it are, in the opinion of the Standards Board arrived at after consultation with the council of the municipality concerned, inappropriate for the purposes of this Act; or
- where, although such a by-law is in force, the methods of enforcement of the by-law are, in the opinion of the Minister arrived at after consultation with the council of the municipality concerned, inappropriate for the purposes of this Act.
- (2) Upon adopting minimum maintenance standards under Notice subsection (1), the Standards Board shall cause the standards to be published in The Ontario Gazette and shall give such further notice thereof as the Standards Board considers appropriate to bring the standards to the attention of landlords of residential complexes and the tenants of the rental units located therein that are affected thereby.

(3) Upon receiving a complaint under clause 15 (1) (f), the Investigation Standards Board shall cause such investigation to be made as the Standards Board considers necessary to enable it to determine whether there exists substantial non-compliance with a substantial maintenance standard adopted by the Standards Board.

(4) Where the Standards Board is satisfied that there exists Contents of in respect of a residential complex or the rental units located therein substantial non-compliance with a substantial maintenance standard adopted by the Standards Board, the Standards Board may make and give or cause to be given to the landlord of the residential complex an order containing.

- (a) the municipal address or legal description of the residential complex;
- (b) reasonable particulars of the work to be performed and the period within which there must be compliance with the terms of the order; and
- (c) the time limited for applying to the Minister for a review of the order.

Application for review of order (5) Where a landlord to whom an order has been given under subsection (4) is not satisfied with the terms of the order, the landlord may, within fourteen days of the giving of the order, make an application in the prescribed form to the Minister to review the order.

Order of Minister

- (6) On an application under subsection (5), the Minister may by order,
 - (a) affirm the order of the Standards Board;
 - (b) quash the order of the Standards Board;
 - (c) vary the order of the Standards Board; or
 - (d) substitute the Minister's own order for the order of the Standards Board.

Copy of order

(7) The Minister shall forthwith give a copy of an order made under subsection (6) to the landlord and to any tenant directly affected by the order.

Appeal from the Minister's order under subs. (6) (8) An order of the Minister made under subsection (6) may be appealed to the Board only in the manner and under the circumstances set out in subsection (10) except that subsection (10) does not apply to an order made under subsection (6) that quashes the order of the Standards Board.

Order of the Minister (9) Where the Minister on the report of the Standards Board is satisfied that an order under this section has not been substantially complied with in accordance with its terms within the period set out for doing so, the Minister, after taking into account the matters mentioned in subsection 15 (9), may, on his or her own motion, make any order the Minister is empowered to make under subsection 15 (4) or (7), the provisions of which subsections apply with necessary modifications.

Joining of appeals from Minister's orders made under subss. (6) and (9) (10) Where a landlord or tenant appeals to the Board from an order of the Minister made under subsection (9), the landlord or tenant may at the same time appeal from any related order of the Minister made under subsection (6), and where the landlord or tenant does so the Board shall hear and determine both appeals together.

PART III

PROCEDURE

17. A person may make an application to the Minister as a Who may landlord or as a tenant, provided the person was a landlord or application a tenant at the time the conduct giving rise to the application occurred.

18.—(1) An application to the Minister shall be made in Form of the prescribed form and shall be signed by the person making the application or his or her agent.

(2) Where a landlord makes an application to the Minister Where name and the name of any tenant directly affected by the appli- not known cation is not known to the landlord, the name of the tenant may be shown in the application as "tenant" and all orders shall be binding on the tenant occupying the rental unit as if the tenant had been correctly named.

(3) Where a tenant makes an application to the Minister Where name and the name of the landlord is not known to the tenant, the not known name of the landlord may be shown in the application as "landlord" and all orders shall be binding on the landlord as if the landlord had been correctly named.

19.—(1) Where a landlord makes an application to the Landlord Minister, the landlord shall within ten days give a copy of the copy of application to any tenant, sub-tenant or occupant who, at the application to time the application is made, is directly affected by the issues raised in the application.

must give tenant, etc.

(2) Where a tenant makes an application to the Minister, the tenant shall within ten days give a copy of the application to the landlord

Tenant must give copy of application to landlord

(3) Where, before an order is made in respect of any application to the Minister, a landlord or tenant is succeeded by a new landlord or tenant, the applicant shall within ten days of becoming aware of such change give the new landlord or tenant a copy of the application.

Where new landlord or new tenant

(4) The Minister shall, on request, give written directions Minister may concerning the giving of copies of an application, and compliance with the directions of the Minister shall be deemed to be compliance with this section.

give written

Extension of time for application, etc.

(5) The Minister may, whether or not the time for making an application to the Minister or giving a copy of the application to any party or filing any documents has expired and where the Minister is of the opinion that it would not be unfair to do so, extend the time for the making of the application to the Minister or giving the application to any party or the filing of any documents, and the Minister may attach such terms and conditions to the extension of time as the Minister considers appropriate and shall give notice in writing of the extension of time to all affected parties.

Application of subss. (1-5) to appeals

(6) The provisions of subsections (1) to (5) apply with necessary modifications to appeals to the Board under Part VII of this Act.

Nonapplication to joint applications (7) This section, except for subsection (5), does not apply to a landlord and any tenants who jointly make an application under section 86 or 89, or who jointly appeal an order made pursuant to the application.

Notice to tenant where rental unit sublet 20.—(1) A tenant who has sublet a rental unit may give notice in writing to the landlord that the tenant requires the landlord to give him or her a copy of any application made by the landlord under this Act or any other notice required to be given by the landlord under this Act that affects the rental unit that is the subject of the subletting and where the tenant does so the landlord shall give a copy of the application or other notice to the tenant by sending it by mail to the address set out in the notice given by the tenant.

Notice to prospective new tenant

(2) The landlord shall, before entering into a tenancy agreement with a new tenant, give the new tenant a notice in writing setting out the maximum rent for the rental unit and shall inform the new tenant of the most recent notice of rent increase given, any pending application made by the landlord under this Act and any current order made in respect of an application or made on the Minister's own motion and any notice of appeal that is pending therefrom.

Where tenant not informed of maximum rent (3) Where the landlord fails to give the new tenant a notice setting out the maximum rent for the rental unit, if the rent initially charged the new tenant is less than the maximum rent, subsection 71 (4) does not apply unless the new tenant has occupied the rental unit for at least a twenty-four month period.

Method of giving notice, etc.

21.—(1) Where this Act permits or requires a notice or document to be given to a person, the notice or document is sufficiently given by,

- (a) handing it to the person, or,
 - (i) where the person is a landlord, to any employee of the landlord exercising authority in respect of the residential complex, or
 - (ii) where the person is a tenant, sub-tenant or occupant, to an apparently adult person in the rental unit:
- (b) leaving it in the mail box where mail is ordinarily delivered to the person;
- where there is no mail box, leaving it at the place where mail is ordinarily delivered to the person; or
- sending it by mail to the address where the person resides or carries on business.
- (2) Where a notice or document is given by mail, it shall be Where notice deemed to have been given on the fifth day after mailing.

given by

(3) Notwithstanding the other provisions of this section, the Minister or the Board, as the case may be, may in writing direct a notice or document to be given in any other manner.

Minister or Board may give written directions

(4) Notwithstanding the other provisions of this section, a notice or document shall be deemed to have been validly given where it is proven that the contents of the notice or document actually came to the attention of the person for whom the notice or document was intended within the time for the giving of the notice or documents under this Act.

Actual notice is sufficient

(5) The computation of time under this Act shall be in Computation accordance with prescribed rules.

of time

22. The parties to an application or an appeal are the persons making the application or appeal, any person entitled, application or appeal other than under subsection 19 (3), to receive a copy of the application or a notice of appeal and any person added as a party by the Minister or the Board.

Parties to

23. Where, in any proceedings under this Act, the Minis- Changing ter or the Board is of the opinion that,

amending applications

(a) a person who should be included as a party has not been included as a party or that a party has been incorrectly named, the Minister or the Board, as the case may be, shall, unless it would be unfair to do so, require that the person be substituted or added

as a party to the proceedings, or be correctly named;

1986

- (b) a person who has been included as a party should not be included as a party, the Minister or the Board, as the case may be, shall require that the person be removed as a party to the proceedings; or
- (c) an amendment to the application or the notice of appeal is justified and fair, the Minister or the Board, as the case may be, may direct the application or notice of appeal be amended accordingly.

Frivolous or vexatious applications or appeals **24.** The Minister or the Board, as the case may be, may refuse to continue any proceedings where, in the opinion of the Minister or the Board, as the case may be, the matter is trivial, frivolous, vexatious or has not been initiated in good faith.

Withdrawing application

25.—(1) An applicant may withdraw an application at any time before the time for submitting representations has ended and thereafter the application may only be withdrawn with the consent of the Minister and the Minister may impose terms on which his or her consent is given.

Withdrawing joint application

(2) A landlord who is party to a joint application under section 86 or 89 may withdraw the application as provided in subsection (1).

Idem

(3) Where all the tenants who are parties to a joint application under section 86 or 89 desire to withdraw the application, they may do so as provided in subsection (1).

Idem

(4) Where the tenants of less than all of the rental units subject to a joint application under section 86 or 89 desire to withdraw the application, they may withdraw their rental units from the application as if they were withdrawing an application under subsection (1) and the application shall continue in respect of the remaining rental units that are subject to the application.

Withdrawing appeal

(5) A landlord or tenant may withdraw an appeal at any time before the hearing of the appeal has commenced but, where the hearing has commenced, the appeal may only be withdrawn with the consent of the Board and the Board may impose terms on which its consent is given.

Withdrawing joint appeal

(6) Where an appeal of an order made under section 87 or 89 has been brought jointly by a landlord and one or more tenants, the appeal may be withdrawn under subsection (5)

only where the landlord or all tenants who are parties to the appeal desire to withdraw the appeal.

26.—(1) Where a landlord or a tenant makes an appli- Filing of cation other than under section 74 or 86, except as otherwise provided under section 63, the party making the application shall, not later than fifteen days from the date of making the application, file with the Minister the documents and material the party relies upon in support of the application and such other material as may be prescribed.

documents

(2) Any party to an application referred to in subsection (1) Inspection may inspect the application and the documents and material submission of filed in respect thereof and any party other than the applicant representmay submit representations in respect of the application and the material filed therewith not later than thirty days from the date of making the application, or such later date as the Minister may allow and where a party does so, the applicant may submit representations in response thereto not later than forty-five days from the date of the making of the application.

(3) Where the Minister extends the time for filing set out in Effect of subsection (1), the Minister shall notify the parties affected by extension of time the application of the extended filing date and of the extended times for making representations under subsection (2) in consequence thereof.

27. All parties to a proceeding under this Act and all per- Parties may sons who have received a notice under section 28 are entitled examine to examine, and the Minister and the Board, as the case may be, shall make available for examination all material filed with the Minister or the Board pertaining to the proceeding.

28.—(1) Before making any order that the Minister is Notice by empowered to make on his or her own motion, the Minister shall give a notice in the prescribed form to any landlords and tenants who would be directly affected by the order, and the Minister shall not make an order sooner than sixty days after the giving of the notice.

(2) Any person who receives a notice under subsection (1) Submission may, not later than thirty days from the giving of the notice documents by the Minister, submit documents and make representations and to the Minister in respect thereof.

representations

29. The Minister may at any time in his or her discretion Referral of refer any application made to the Minister, or any matter that to Board has been commenced on the Minister's own motion, to the Board and the Board in such case shall hear and determine

the application or matter as though it were an appeal under Part VII.

Powers of Minister

- 30.—(1) The Minister in respect of any application, or any matter that has been commenced on the Minister's own motion, under this Act may,
 - (a) conduct any enquiry or inspection of documents or premises the Minister considers necessary;
 - (b) question any person, by telephone or otherwise;
 - convene a meeting between the parties to the application or between any persons directly affected by the order for the purpose of discussion of issues raised by the application or matter; and
 - (d) by notice in writing, direct any party to the application, or any person directly affected by the matter, to file, within such time as is set out in the notice, such information or additional information as the Minister considers necessary.

Time and place of meeting

(2) So far as is practicable, the Minister shall hold the meeting mentioned in clause (1) (c) at a time and place agreed to by the parties or persons directly affected.

Inspection

(3) Where, under clause (1) (d), the Minister has directed information or additional information to be filed, the Minister shall notify each of the other parties to the application or landlords and tenants directly affected of the direction and any other party to the application or landlord or tenant directly affected may inspect the information or additional information filed and may submit representations in respect thereof not later than twenty days from the date on which the information or additional information was required to be filed.

Time for submitting representations

(4) Where a direction under clause (1) (d) is in respect of an application made under section 74 (whole building review), any party to the application may submit representations in respect thereof not later than forty days before the effective date of the first rent increase applied for or not later than twenty days from the date on which the information or additional information was required to be filed, whichever the last occurs.

Where information or additional information not filed

(5) Where any party to an application fails to comply with a direction of the Minister under clause (1) (d) to file any information or additional information, the Minister may,

- (a) in the case of the applicant, refuse to make an order granting the application or that part of the application relating to the failure to comply with the direction: and
- (b) in the case of any other party to the application, or person directly affected by the matter, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.
- 31. In making any determination in an application under Matters to be this Act or on any matter commenced on the Minister's own motion, the Minister,

- (a) shall consider any documents, material and oral or written representations submitted in respect of the application or matter commenced on the Minister's own motion; and
- (b) may consider any relevant information obtained by the Minister in addition to the information referred to in clause (a), provided that the Minister first informs the parties of the additional information and gives them an opportunity to explain or refute
- 32. Where an application is made to the Minister under Nonthis Act, or where the Minister gives a notice under section of 28, a hearing shall not be held in respect of the application or R.S.O. 1980, the matter referred to in the notice and the Statutory Powers Procedure Act does not apply to the Minister in the exercise of a statutory power of decision under this Act.

33.—(1) An order made by the Minister under this Act, Order of subject to Part VII, is final, binding and not subject to review and shall take effect and is enforceable according to its terms from the date it is made.

(2) Where the Minister makes an order under this Act, the Copy of Minister shall forthwith give a copy of the order to each of the parties to the application, or where the order is made on the Minister's own motion, to each landlord and tenant directly affected by the order, together with a written summary in the prescribed form of reasons for the order.

34.—(1) The Minister or the Board may include in any Terms and order terms and conditions the Minister or the Board, as the case may be, considers proper in all the circumstances.

Clerical errors

(2) An order made by the Minister or by the Board that contains a clerical error or omission of the Minister or the Board may be amended by the Minister or the Board, as the case may be, at any time before the hearing of any appeal of the order has been commenced.

Where tenant may deduct amount from rent 35.—(1) Where the Minister or the Board makes an order requiring a landlord to pay an amount of money to a tenant, the Minister or the Board may make an order that the tenant may recover the amount by deducting a specified sum from his or her rent for a specified number of rent payment periods.

Lump sum payments

(2) The Minister or the Board may, on the application of the tenant, rescind an order made under subsection (1) and may order that any compensation still owing be paid in a lump sum.

Enforcement of order for the payment of money **36.**—(1) A certified copy of an order of the Minister or the Board, as the case may be, for the payment of money may be filed with the Supreme Court, the District Court or the Provincial Court (Civil Division) and, on being filed, the order has the same force and effect and all proceedings may be taken on it as if it were a judgment of that Court.

Variation of order

- (2) Where an order filed under subsection (1) is rescinded or varied, upon filing in accordance with subsection (1), the order or decision rescinding or varying the order previously made.
 - (a) if the order or decision rescinds the order previously made, the order previously made ceases to have effect for the purposes of subsection (1); or
 - (b) if the order or decision varies the order previously made, the order previously made as so varied may be enforced in a like manner as an order or decision filed under subsection (1).

PART IV

RENT REVIEW HEARINGS BOARD

Board established

37. A board to be known as the Rent Review Hearings Board is established.

Composition of Board

38.—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint.

(2) The members of the Board who are not members of the Remuneration public service of Ontario shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines

(3) The Public Service Superannuation Act and the Application Superannuation Adjustment Benefits Act apply to members of the Board

R.S.O. 1980, cc. 419, 490

39. Members of the Board, other than the vice-chairman, shall not be members of the public service of Ontario, and shall hold office during pleasure.

Term of

40. Subject to subsection 103 (2), one member of the Quorum Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Board in any proceedings before the Board.

41.—(1) The Lieutenant Governor in Council shall Chairman appoint one of the members of the Board as chairman, and chairman another of the members as vice-chairman.

(2) The chairman shall from time to time assign members Chairman of the Board to its various sittings and shall be the chief executive utive officer of the Board.

officer

(3) The vice-chairman is responsible for the general Absence, administration of the affairs of the Board and where the chairman is absent or unable to act, the vice-chairman may act as chairman.

42. Where a member of the Board resigns or retires, or Completion for any other reason ceases to be a member, the member of matters by may, with the consent of the chairman, in connection with any members matter in which the member participated as a member of the who resign or Board, carry out and complete any duties or responsibilities retire, etc. and exercise any powers that the member would have had if the member had not ceased to be a member of the Board.

43.—(1) The members shall devote the whole of their Members time to the performance of their duties as members of the Board, and shall not accept or hold any office or employment inconsistent with such duties.

(2) The members shall file with the Board a written declara- Conflict of tion of any interests they have in residential rental property, and shall be required to comply with the conflict of interest guidelines established by the Board.

Staff c. 418

44. Such employees as are required for the purposes of R.S.O. 1980, the Board may be appointed under the *Public Service Act*.

Professional assistance

45. Subject to such conditions as the Minister may set, the Board may engage persons other than those appointed under section 44 to provide professional, technical or other assistance to the Board and may establish the duties and terms of the engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity for acts done in good faith

46. No action or other proceeding for compensation or damages shall be instituted against the Board, any member of the Board or any member of the Board staff, for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Publication of decisions

47. The Board shall, at least annually, prepare and publish a summary of significant decisions of the Board and the reasons therefor.

Board to adopt expeditious procedures

48. The Board shall adopt the most expeditious method of determining the questions arising in any proceeding that affords to all persons affected by the proceedings an adequate opportunity to know the issues and be heard on the matter.

Decision to be on merits

49.—(1) Every decision of the Board shall be upon the real merits and justice of the case.

Board to ascertain substance of transactions and activities, etc.

- (2) In determining the real merits and justice of the case, the Board shall ascertain the real substance of all transactions and activities relating to the residential complex and the good faith of the participants and in doing so,
 - may disregard the outward form of the transaction or the separate corporate existence of the participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex.

Audit

50. The accounts of the Board shall be audited annually by the Provincial Auditor.

Annual report

51.—(1) The Board shall at the close of each year file with the Minister an annual report upon the affairs of the Board.

(2) The Board shall make such further reports to the Minis-Further ter and provide the Minister with such information as the Minister from time to time requires.

(3) The Minister shall submit the reports to the Lieutenant Tabling Governor in Council and shall then lay the reports before the Assembly if it is in session or, if not, at the next ensuing session.

52. All expenses incurred and expenditures made by the Moneys Board in the conduct of its affairs shall be paid out of moneys appropriated therefor by the Legislature.

53. The Board may charge and collect such fees as are Fees prescribed for furnishing to any person, at his or her request, copies of forms, notices or documents filed with or issued by the Board.

PART V

RENT REGISTRY

54.—(1) In this Part,

Definitions

"actual rent", except where otherwise prescribed, means the rent actually charged for a rental unit as of the actual rent date:

"actual rent date" means,

- (a) the 1st day of July, 1985, or
- (b) where a rental unit was not rented on the 1st day of July, 1985, the first date on which that rental unit is rented after the 1st day of July, 1985.
- 55. The Minister shall establish and maintain a rent regis- Establishtry for all residential complexes that are subject to this Act.

ment of rent registry by Minister

56.—(1) The Minister shall, on the request of any person made in the prescribed manner, furnish that person with information that is recorded in the rent registry in respect of from rent any rental unit, but may limit the information so furnished in accordance with the prescribed rules.

Furnishinformation registry

- (2) The Minister may charge such fees as are prescribed for Fees furnishing information under subsection (1).
- **57.**—(1) Every landlord of a residential complex contain- Filing of ing more than six rental units, other than a residential com-

plex that is a boarding house or a lodging house, shall file a statement in the prescribed form with the Minister,

- (a) on or before the first day of the month that falls not sooner than ninety days after the day this section comes into force, in respect of all rental units in the residential complex that were rented on or before the day this section comes into force; and
- (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

- (2) Every landlord of a residential complex containing six or fewer rental units or of a residential complex that is a boarding house or a lodging house shall file the statement mentioned in subsection (1),
 - (a) on or before a date to be prescribed, in respect of all rental units in the residential complex that were rented on or before that date; and
 - (b) within six months of the day the first of the rental units in the residential complex not mentioned in clause (a) becomes rented and thereafter every six months until a statement has been filed in respect of all rental units in the residential complex.

Idem

(3) Notwithstanding that a date has not been prescribed under subsection (2), a landlord of a residential complex containing six or fewer units or of a residential complex that is a boarding house or a lodging house may file the statement mentioned in subsection (1) at any time.

Contents of statement

- **58.**—(1) The statement mentioned in section 57 shall set out the following information:
 - 1. The name and address of the landlord and, where the landlord is not ordinarily resident in Ontario, the name and the address of the landlord's representative or agent in Ontario.
 - 2. The municipal addresses of all buildings which form part of the residential complex.
 - 3. The type (by number of bedrooms) and location (by suite number or other means of identification) of each rental unit in the residential complex that is

subject to rent regulation, together with the actual rent for each such rental unit and the date the actual rent was first charged.

- 4. Those services and facilities, accommodations and things included in the actual rent for which a separate charge is allocated and the amount of each.
- 5. Whether the landlord, as of the actual rent date, was responsible for providing hydro, water, heat, cablevision or parking without the allocation of a separate charge.
- The provisions of any written tenancy agreement 6. mentioned in subsection 2 (3) which conflict with the provisions of this Act concerning the amount of rent that may be charged for a rental unit.
- The type and location of each rental unit in the residential complex, if any, in respect of which the information in paragraphs 3 to 6 is not required to be set out in the statement, together with the reasons therefor.
- 8. Such other information as is prescribed.

(2) Subject to subsection (3), the statement filed with the Certification Minister under section 57 shall contain a certification signed by the landlord or, if the landlord is a corporation, signed by the president, secretary or other authorized senior officer thereof, certifying that the information contained in the statement, and any attachments thereto, is true, correct and complete to the best of the landlord's knowledge and belief.

(3) A landlord may authorize an agent in writing to make Certification the certification mentioned in subsection (2), and the Minister may require a copy of the document authorizing the agent to make the certification to be filed.

by agent

59.—(1) Where an order issued under this Act, the Minister to Residential Tenancies Act or The Residential Premises Rent amount Review Act, 1975 (2nd Session) affects the rent which may be where charged for a rental unit for which the actual rent has been set prior order affects out in a statement filed under section 57, the Minister shall rental unit calculate the amount obtained by adding to the rent set out in R.S.O. 1980, the most recent such order all permissible statutory increases 1975 from the effective date of the rent in the order to the actual (2nd Sess.), rent date.

calculate

Application within 90 days

(2) Where the actual rent for a rental unit set out in the statement is the same as or lower than the amount calculated under subsection (1), or does not exceed that amount by more than the prescribed percentage, the time for making an application under section 61 in respect of that rental unit shall be not later than ninety days from the day of the giving by the Minister of a notice under section 60.

Application within two years

(3) Where the actual rent for a rental unit set out in the statement exceeds the amount calculated under subsection (1) by more than the prescribed percentage, or where there are no prior orders affecting the rent which may be charged for a rental unit, the time for making an application under section 61 in respect of that rental unit shall be not later than two years from the day of the giving by the Minister of a notice under section 60.

Notice to landlord of rents recorded

60.—(1) As soon as is practicable, the Minister shall give to every landlord who has filed a statement under section 57 a notice in the prescribed form setting out the information recorded for all rental units for which the statement was filed and the time for making an application under section 61.

Notice to tenant of rent recorded for tenant's rental unit

(2) As soon as is practicable, the Minister shall give to the tenant of every rental unit in respect of which the landlord is given a notice under subsection (1) a notice in the prescribed form setting out the recorded information pertaining to the tenant's rental unit and the time for making an application under section 61.

Application to dispute information in notice

61.—(1) A landlord or a tenant who has been given a notice under section 60 may, in the time permitted by subsection 59 (2) or (3), whichever applies, make an application in the prescribed form to the Minister to correct or amend any information in the notice or to dispute the legality of the actual rent.

Application for declaration

(2) A landlord who has been given a notice under subsection 60 (1) may in the time permitted by subsection 59 (2) or of lawful rent (3), whichever applies, make an application in the prescribed form to the Minister for an order declaring the actual rent recorded in the rent registry to be the lawful maximum rent as of the actual rent date.

Where actual rent recorded is deemed lawful rent

(3) Where no application under subsection (1) or (2) is made and no notice mentioned in subsection (4) is given, the rent recorded in the rent registry for such rental unit shall be deemed to be the lawful maximum rent as of the actual rent date.

(4) In respect of any rental unit mentioned in subsection Investiga-59 (3), the Minister.

tion by Minister

- (a) shall, in the case of a rental unit whose rent is affected by a prior order; and
- (b) may, in the case of a rental unit whose rent is not affected by a prior order.

investigate the rents charged for such rental unit and may, on the Minister's own motion, make any order which could have been made had the landlord or the tenant made an application under subsection (1) or (2), provided that the notice under subsection 28 (1) is given by the Minister within the time for making an application in respect of that rental unit.

62.—(1) In any application under section 61, or in Justification response to the Minister's own motion under that section, the of actual rent landlord may justify the actual rent for any rental unit by adding to the rent permitted to be charged set out in the most recent order made under this Act, Part XI of the Residential R.S.O. 1980, Tenancies Act or The Residential Premises Rent Review Act, 1975 1975 (2nd Session), or where no order exists, to the rent (2nd Sess.), charged for the rental unit on the 29th day of July, 1975, or c. 12 on the earliest date thereafter for which the rent charged is known,

c. 452

- (a) rent increases permitted by Part XI of the Residential Tenancies Act and The Residential Premises Rent Review Act, 1975 (2nd Session); and
- (b) rent increases that could have been justified on or after the 29th day of July, 1975, and before the 1st day of August, 1985, on an application made under section 126 of the Residential Tenancies Act, had R.S.O. 1980, that Act been in force during the whole of that period of time and had the disposition of the application been governed by the prescribed rules made under this Act.

provided that only an increase permitted or justified under either clause (a) or (b), but not both, may be relied upon to calculate the rent increase for any one twelve-month period.

(2) Where clause (1) (b) is relied upon to calculate a rent Determinaincrease, the Minister shall determine the justified rent increase in accordance with the prescribed rules and shall consider, in the prescribed manner, any services or facilities that have been added or discontinued on or after the 29th day of

tion of justified rent increase by Minister

1986

July, 1975, and before the 1st day of August, 1985, and that affect the rental unit.

Where rent justified lower than actual rent (3) Where under this section the landlord, in respect of any rental unit, justifies a rent that is lower than the actual rent, the amount so justified by the landlord shall be deemed to be the lawful maximum rent for that rental unit as of the actual rent date.

Where section does not apply

(4) This section does not apply to a rental unit situate in a residential complex in respect of which the statement mentioned in section 57 has not been filed within the time permitted for filing.

Filing of documents and material by landlord **63.**—(1) Where a landlord makes an application under subsection 61 (1) or (2) to justify under section 62 the actual rent charged for a rental unit, the landlord shall, not later than thirty days from the date of making the application, file with the Minister the documents and material the landlord relies upon in support of the application and such other material as may be prescribed.

Inspection and submission of representations by tenant

(2) Any tenant affected by the application may inspect the application and any documents and material filed in respect thereof and may submit representations in respect of the application and the documents and material filed therewith not later than eighty days from the date of making the application.

Filing of documents and material by tenant (3) Where a tenant makes an application under subsection 61 (1), the tenant shall, not later than fifteen days from the date of making the application, file with the Minister the documents and material the tenant relies upon in support of the application and such other material as may be prescribed.

Filing of justification, etc., by landlord; response by tenant (4) A landlord who proposes, in response to a tenant's application under section 61, to justify under section 62 the actual rent charged for a rental unit shall, not later than forty-five days from the date of the making of the tenant's application, file with the Minister a justification in the prescribed form together with the documents and material the landlord relies upon in support of the justification and such other material as may be prescribed and within ten days of the filing give a copy thereof to any affected tenant, and where the landlord does so, the tenant may submit representations in response thereto not later than ninety-five days from the date of the making of the tenant's application.

Idem

(5) A landlord who proposes, in response to the Minister's proposal to make an order under subsection 61 (4), to justify

under section 62 the actual rent charged for a rental unit, shall, not later than thirty-days from the giving by the Minister under subsection 28 (1) of the notice in respect of the proposed order, file with the Minister a justification in the prescribed form together with the documents and material the landlord relies upon in support of the justification and such other material as may be prescribed and within ten days of the filing give a copy thereof to any affected tenant, and where the landlord does so, the tenant may submit representations in response thereto not later than eighty days from the date of the giving of the notice by the Minister under subsection 28 (1).

(6) Where the Minister extends the time for filing set out in Effect of this section, the Minister shall notify the parties affected by the application of the extended filing date and of the extended times for making representations in consequence thereof.

64. In any order made by the Minister under this Part, the Order of Minister shall,

- (a) declare the maximum rent that may be charged for each rental unit subject to the order and the earliest date that each may take effect; and
- (b) require any necessary changes to be made to the information recorded in the rent registry.
- 65. Where the Minister is satisfied that any information Clerical recorded in the rent registry is incorrect due to a clerical error or omission, the Minister may, within two years of the date of the error or omission, amend the rent registry accordingly and shall notify the affected parties of any corrected information.

66.—(1) Where a landlord has filed a statement under Rebate section 57 within the time permitted for filing, no amount where shall be ordered under subsection 95 (2) in respect of any statement excess rent paid before the 1st day of August, 1985 in respect of any rental unit for which the actual rent has been set out in the statement

filed on time

(2) Where a landlord has not filed a statement under sec- Rebate tion 57 or has filed a statement later than the time permitted where for filing, no amount shall be ordered under subsection 95 (2) statement for any excess rent paid more than six years before the filing filed late date of a tenant's application under that subsection.

ordered

67. Where a landlord fails to file a statement under sec- Where tion 57 in respect of a residential complex on or before the filed within expiry of the three-month period following the time specified three months

statement not of time for filing

in that section for the filing of the statement, the Minister on his or her own motion may order that the collection by the landlord of any increase in the rent charged for any rental unit in the residential complex be stayed until the landlord has filed the required statement.

Where no statement filed

68. On or after the first day of the month that falls not sooner than ninety days after the day determined under clause 57 (1) (a), no application made by a landlord or appeal by the landlord therefrom under this Act shall be proceeded with by the Minister or the Board if the landlord has not filed a statement under section 57 in respect of the residential complex concerned, whether or not the time for filing the statement has expired.

Register to be kept current

- 69. The Minister shall keep current the information recorded in the rent registry by incorporating, where applicable.
 - an order made under this Act; (a)

R.S.O. 1980, c. 452

- (b) an order made under the Residential Tenancies Act;
- (c) a statutory increase permitted to be taken under this Act;
- (d) a statutory increase that was permitted under Part XI of the Residential Tenancies Act;
- (e) a notice given under subsection 92 (2);
- a written approval of the Minister given under sub-(f) section 91 (6); and
- any other relevant change in the information recorded in the rent registry.

PART VI

RENT REGULATION

Twelvemonth period between rent increases

70. The rent charged for a rental unit shall not be increased unless a period of at least twelve months has elapsed since the date of the last rent increase.

Maximum increase without application

71.—(1) Unless otherwise authorized under this Act, no landlord shall increase the rent charged for a rental unit,

- (a) to take effect on or after the 1st day of August, 1985, and before the 1st day of January, 1987, by more than 4 per cent; and
- (b) to take effect on or after the 1st day of January, 1987, and to take effect on or after the 1st day of January in any subsequent year, by more than the percentage set out in the Residential Complex Cost Index for the year, as published by the Minister and calculated in accordance with the formula set out in Schedule A hereto.

of the last rent that was charged for the rental unit for an equivalent rental period.

(2) The Minister shall calculate the Residential Complex Calculation Cost Index that is applicable for each year and shall publish the Index in The Ontario Gazette not later than the 31st day of August of the immediately preceding year.

publication of Index by

(3) Notwithstanding subsection (2), in respect of the Residential Complex Cost Index applicable for the year 1987, the Minister shall calculate and publish the Index in *The Ontario* Gazette not later than thirty days after the day this subsection comes into force.

RCCI for

(4) A landlord may increase the rent charged for a rental Maximum unit by more than the amount permitted by clause (1) (a) or (b) without making an application under this Act, provided that the amount of the rent after the increase is applied is not higher than the maximum rent as of the date the rent increase takes effect.

72. A landlord may make an application under this Part Landlord despite the fact that the landlord may not have, in respect of any rental unit, given notice under section 5 (notice of rent increase), but nothing in this section relieves the landlord from compliance with section 5.

although notice of rent increase not yet given

73.—(1) This section applies only to rental units that, before the repeal of clauses 134 (1) (c) and (d) of the Residential Tenancies Act by section 126 of this Act, were exempt from Part XI of that Act.

Application R.S.O. 1980,

(2) Where a notice of rent increase to increase the rent Notice for charged for a rental unit by more than the increase permitted by clause 71 (1) (a) or (b), whichever is applicable, has been given before this section comes into force, to take effect on or after the 1st day of August, 1985, where the landlord makes under an application permitted under clause (3) (b), the rent

increase of than amount increase specified in the notice may be charged and collected by the landlord until such time as an order setting the maximum rent that may be charged for the rental unit takes effect.

Landlord to repay excess rent or bring application under s. 74

- (3) A landlord who has increased the rent charged for a rental unit by more than the increase permitted by clause 71 (1) (a) or (b), whichever is applicable effective on or after the 1st day of August, 1985, pursuant to a notice of rent increase given before this section comes into force, shall, on or before the sixtieth day after the coming into force of this section,
 - (a) pay to the tenant of the rental unit the amount of the rent paid by the tenant that is in excess of the increase permitted by clause 71 (1) (a) or (b), whichever is applicable; or
 - (b) apply to the Minister under section 74 (whole building review) even though the time for making such an application set out in subsection 74 (3) has expired.

Where landlord fails to comply with cl. (3) (a) or (b)

- (4) Where a landlord fails to comply with clause (3) (a) or (b), the tenant may,
 - (a) deduct the amount of the rent paid by the tenant that is in excess of the increase permitted by clause 71 (1) (a) or (b), whichever is applicable from a subsequent rent payment and so continue until the full amount of the excess rent has been satisfied; or
 - (b) make an application to the Minister under subsection 95 (2).

Application by landlord **74.**—(1) Where a landlord desires to increase the rent that may be charged for a rental unit by more than the amount permitted by section 71, the landlord may apply to the Minister in the prescribed form for an order permitting the landlord to do so, whether or not the rental unit is the subject of a tenancy agreement at the time of application.

Whole building review

(2) When the landlord applies to the Minister under subsection (1), the landlord shall, as part of the same application, apply for a determination of the rents that may be charged for all of the rental units in the residential complex in which the units are situate when such units are rented or re-rented during the twelve-month period following the effective date of the first rent increase applied for, whether or not those units are the subject of tenancy agreements at the time of application.

(3) An application made under this section shall be made Time for not later than ninety days before the effective date of the first application intended rent increase.

(4) At the time the application is filed, the landlord shall Filing of file with the Minister a cost revenue statement in the prescribed form together with all documents that the landlord relies upon in support of the application and such other material as may be prescribed.

(5) Any tenant affected by the application may submit Submission material and make representations in respect thereto not later of material and than forty days before the effective date of the first rent making of increase applied for and where a tenant does so the landlord representamay submit material and make representations in response thereto not later than forty days before the effective date of the first rent increase applied for or twenty days from the date of the tenant's submission, whichever is the later.

(6) Where the Minister extends the date for filing under Extension subsections (3) and (4) or the date for submitting material and making representations under subsection (5), the Minister shall notify each of the parties affected by the application of the extended date and any party shall be permitted up to forty days before the effective date of the first rent increase applied for or twenty days from the extended date, whichever is the later, to submit material and make representations in respect of the application.

75. Where an application is made by a landlord to the Determi-Minister under section 74, the Minister shall determine the by Minister total rent increase for the residential complex that is justified of total by,

rent increase

- (a) the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
- (b) the findings of the Minister concerning financing costs, capital expenditures and extraordinary operating costs that the landlord has experienced or will experience in respect of the residential complex;
- (c) the degree to which actual financing costs or capital expenditures vary from the projected amounts allowed in respect of such costs or expenditures in a previous order made under this Act or the Residen- R.S.O. 1980, tial Tenancies Act:

- (d) the prescribed allowances for management and administration in respect of capital expenditures;
- (e) the findings of the Minister concerning a financial loss that the landlord has experienced or will experience in respect of the residential complex;
- (f) the findings of the Minister concerning a change in the services and facilities provided or in the standard of maintenance and repair in respect of the residential complex or any rental unit located therein;
- (g) in respect of a residential complex no part of which was occupied as a rental unit before the 1st day of January, 1976, the rate of return that is applicable to the residential complex in order to eliminate an economic loss;
- (h) the findings of the Minister concerning financing costs no longer borne by the landlord and which were allowed in a previous order determining rent increases under this Act or the *Residential Tenancies Act*, where the rate increase in financing costs that justified the rent increase awarded in the previous order took effect on or after the 1st day of August, 1985;
- (i) in respect of a residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, the extent to which the rent for the residential complex is a chronically depressed rent within the meaning of section 91; and
- (j) the findings of the Minister concerning matters prescribed.

Where grounds for increase financing costs, financial loss, economic loss or do not include capital expenditures

R.S.O. 1980, c. 452

76.—(1) Where, on an application made by a landlord under section 74, it is found by the Minister that the grounds that justify an increase in rent by more than the amount permitted by section 71,

- (a) are only one or more of the financing costs, financial loss or economic loss; or
- (b) do not include any amount for capital expenditures,

that the landlord has experienced or will experience in respect of the residential complex, the Minister shall apply the percentage determined under clause 71 (1) (a) or (b) whichever is applicable, instead of the operating cost allowance determined under clause 75 (a).

(2) Notwithstanding subsection (1), where on an application Continuing made by a landlord under section 74, a capital expenditure is expenditure found by the Minister to be of a continuing nature within the meaning of the regulations made under this Act, the Minister, in respect of any subsequent application made by the landlord under section 74 in which the capital expenditure is found to be continuing, shall apply the percentage determined under clause 71 (1) (a) or (b) whichever is applicable, instead of the operating cost allowance determined under clause 75 (a).

77.—(1) Where a landlord claims to have experienced a Proof of financial loss or an economic loss or where the landlord may costs be entitled to an allowance for relief of hardship or an allowance in respect of chronically depressed rent, the landlord shall submit proof of the actual operating costs that the landlord has experienced in respect of the residential complex.

operating

(2) Notwithstanding subsection (1), where, for the purposes of a prior order made under subsection 83 (1) of this Act or under subsection 131 (5) of the Residential Tenancies Act, the R.S.O. 1980, operating costs experienced in respect of the residential complex have been determined, and where the effective date of the first rent increase set out in that order is not more than three years prior to the effective date of the first rent increase applied for by the landlord in the current application, the landlord may elect not to submit proof of the operating costs that the landlord has experienced in respect of the residential complex.

Election by landlord

(3) Where the landlord makes an election under subsection Determi-(2), the operating costs shall be determined by reference to of operating the amounts determined for the purposes of the prior order costs where referred to in subsection (2), increased in the prescribed manner.

78.—(1) In making findings concerning capital expendi- Allowance tures under clause 75 (b) or under clause 87 (1) (b), the Minerest, ister shall.

- allow interest on the expenditure, whether financed by borrowing or out of the landlord's own funds, or by a combination thereof, at the prescribed rates;
- (b) when the expenditure is financed by borrowing, allow the value of any guarantees given by or on behalf of the landlord to the lender; and

(c) allow the value of the landlord's own labour, if any, in carrying out the work involved in the capital expenditure.

Reduction for capital expenditures previously allowed R.S.O. 1980, c. 452 (2) Where, in an application under section 74 or 86, the landlord claims a capital expenditure for the replacement of an item allowed as a capital expenditure in a previous order made under this Act or the *Residential Tenancies Act*, and where the capital expenditure allowed in the previous order was completed on or after the 1st day of August, 1985, the Minister shall reduce the total rent increase that would otherwise be justified in the application by the amount allowed in respect of the capital expenditure in the previous order.

Limitation on consideration of financing costs 79.—(1) In making findings concerning financing costs under clause 75 (b), the Minister shall consider increases in financing costs resulting from the landlord's purchase of the residential complex only to the extent necessary to prevent a financial loss by the landlord.

Relief of hardship

(2) Where an application is made by a landlord under section 74, if the revenue found in respect of the residential complex does not exceed the actual operating and financing costs by at least 2 per cent, the Minister may, where he or she considers it necessary to relieve the landlord from hardship, allow the landlord the additional revenue required to raise the revenue to not more than 2 per cent above those costs.

Limit on rent increase attributable to increased financing costs resulting from purchase of residential complex (3) Where a landlord claims a financial loss arising out of an increase in the financing costs of the residential complex resulting from a purchase or purchases of the residential complex, the Minister, when determining the total rent increase for the residential complex, shall allow in the initial year (as the component of the total increase in rent determined by the Minister that is attributable to such increase in financing costs) not more than 5 per cent of the total of the last lawful rents that were charged for the residential complex and in subsequent years the amount allowed in respect thereof by the Minister in any such year shall not exceed 5 per cent of the total of the last lawful rents that were charged for the residential complex.

Definition

(4) For the purposes of subsections (1), (3) and (6), "purchase" means the acquisition of a residential complex, after the 31st day of December, 1979, by any means whatsoever and includes the acquisition, whether by way of transfer, assignment or otherwise, of an interest, in whole or in part, in an option to purchase or in any agreement to purchase a residential complex.

(5) Where the Minister allows a financial loss arising out of Limitation the circumstances set out in subsections (1) and (3), the Minishardship ter shall not allow the additional revenue mentioned in sub- allowance section (2) except in the last year during which the financial loss is phased in, but then only where the amount attributable to the financial loss together with the amount allowed under subsection (2) does not exceed 5 per cent of the last lawful rents that were charged for the residential complex.

(6) Subsections (3) and (5) do not apply to the purchase of Where a residental complex, no part of which was occupied as a subss. (3, 5) do not apply rental unit before the 1st day of January, 1976, where,

- (a) the purchase was from the original owner of the residential complex and the residential complex was constructed for the purpose of such a purchase; or
- (b) the building permit to construct the residential complex was issued on or before the 18th day of April. 1986, and the agreement to purchase was entered into on or before the 18th day of April, 1986.
- (7) In making findings concerning financial loss under Interest clause 75 (e), the Minister shall allow interest paid after the 1st day of August, 1985, at the prescribed rates on loans in respect of any financial loss incurred since the acquisition of the residential complex by the landlord, provided that where the financial loss arises out of an increase in financing costs resulting from a purchase or purchases or refinancing thereof in respect of the residential complex, the maximum allowed financing shall not exceed 85 per cent of the acquisition cost and only that portion of the interest paid on loans attributable to the maximum allowed financing shall be allowed.

80.—(1) The rate of return in respect of a residential complex, no part of which was occupied as a rental unit before the 1st day of January, 1976, and the building permit for the construction of which is issued.

- (a) on or before the 31st day of December, 1986, is 10 per cent; or
- after the 31st day of December, 1986, is the threeyear moving average, as of the year in which the building permit is issued, of the Canada Bond rate for ten years and over plus 1 percentage point,

of the landlord's initial invested equity, including the principal portion of any debt not otherwise allowed, up to the amount of the acquisition costs of the residential complex, and capitalized financial losses.

Phase in of economic loss and financial loss

- (2) Where a landlord claims an economic loss in respect of a residential complex no part of which was occupied as a rental unit before the 1st day of January, 1976, the Minister shall allow in the initial and any subsequent year, as the amount attributable towards the elimination of financial loss and economic loss,
 - (a) in respect of a residential complex, the permit for the construction of which was issued on or before the 1st day of July, 1986, the greatest of,
 - (i) the amount required to eliminate the economic loss over a period of five years from the earliest effective date of rent increase set out in the first order made on an application under section 74,
 - (ii) 5 per cent of the gross potential rent for the preceding year or the total of the amount required to eliminate the economic loss, whichever is less, and
 - (iii) the amount required to eliminate the financial loss experienced in the preceding year; and
 - (b) in respect of a residential complex, the permit for which was issued after the 1st day of July, 1986, the lesser of,
 - (i) the total of the amount required to eliminate the economic loss and the financial loss together with the amounts otherwise justified in the application under section 74, and
 - (ii) the portion of that amount that will result in a maximum rent increase that does not exceed the highest of,
 - (A) the amount required to eliminate the financial loss experienced in the preceding year,
 - (B) 10 per cent of the gross potential rent for the preceding year, and

- (C) an amount that is three times the increase permitted under subsection 71 (1).
- 81. In making findings under clause 75 (h), the Minister Extent of shall consider a financing cost which is no longer borne only of financing to the extent of the amount that was previously allowed in cost no respect of that financing cost.

consideration longer borne

82.—(1) In apportioning the total rent increase amongst the rental units in the residential complex, the Minister may total rent take into account the following matters:

Apportionincrease

- The rent schedule proposed by the landlord's appli-
- Variations, and the reasons therefor, in the rents 2. being charged by the landlord for similar rental units within the residential complex.
- The degree to which any capital expenditures the 3. landlord has experienced or will experience in respect of the residential complex affect individual rental units in the residential complex.
- Any other prescribed matter.

(2) In apportioning the total rent increase under subsection Equalization (1), the Minister may set the maximum rent that may be charged for a rental unit so that the landlord may achieve equalization of rents charged for similar rental units within the residential complex but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that rental unit in the twelve-month period immediately preceding the date of the rent increase.

(3) In setting the maximum rents to achieve equalization Maximum under subsection (2), the Minister may set a maximum rent lower than for a rental unit that is less than the rent currently being current rent charged for that rental unit.

83.—(1) Where the Minister has determined and apporting tioned the total rent increase on an application made under section 74.

rent chargeable for each unit

(a) the Minister shall order the maximum rent that may be charged for each rental unit in the residential complex that is under review and the earliest date that each may take effect; and

(b) the Minister may order that the landlord or tenant pay to the other any sum of money that is owed to the other by reason of the order of the Minister setting the maximum rent for a rental unit.

Minister may order increase less than statutory increase (2) Where a landlord has applied for a rent increase greater than the amount permitted by section 71, the Minister may, if his or her findings so justify, allow a rent increase of less than the amount permitted by section 71.

Where rent charged exceeds maximum rent (3) In any application under section 74, where the Minister finds that the rent being charged for any rental unit exceeds the maximum rent for that rental unit, the Minister shall apply any rent increase that is otherwise justified, not to the rent currently being charged for the rental unit, but to the maximum rent for that rental unit.

Time for making order (4) Subject to subsection (5), the Minister shall make an order in respect of any application under this section not later than fifteen days before the effective date of the first rent increase applied for in the application.

Extension of time for making order (5) Where it is not possible in the circumstances for the Minister to make an order in respect of any application within the time set out in subsection (4), the Minister shall notify in writing the parties to the application of the reason why it is not possible and of the date on or before which the order will be made.

Application by landlord for equalization of rents **84.**—(1) Without bringing an application under section 74, a landlord may make an application in the prescribed form to the Minister for an order apportioning the total rent charged in respect of a residential complex amongst the rental units situate therein, for the purpose of varying the rents so as to achieve equalization of rents charged for similar rental units within the residential complex.

Time for making application (2) An application under subsection (1) shall be made at least ninety days before the effective date of the first intended variation in rent as set out in the application.

Apportioning of rents charged to achieve equalization

(3) Where the Minister is satisfied in an application made under this section that the rents ought to be equalized, the Minister shall set the rent that may be charged for any rental unit so that the landlord may achieve equalization of the rents charged for similar rental units within the residential complex, but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5 per cent of the maximum rent that was chargeable for that

rental unit in the twelve-month period immediately preceding the date or dates of the rent increase.

(4) In setting the rents to achieve equalization under sub-Rent set section (3), the Minister may set a rent that may be charged curent for a rental unit at an amount that is less than the rent cur- rent rently being charged for that rental unit.

(5) Where the Minister has determined and apportioned Order re the rent charged amongst the rental units in the residential variation rents to complex, the Minister shall order the percentage, if any, by achieve which the rent charged for a rental unit may be varied from the amount that would otherwise be the maximum rent for that rental unit and the date or dates on which such variation may take effect.

equalization

85.—(1) Within two years of the effective date of the first Application rent increase set out in an order made under subsection adjustment 83 (1), a landlord or a tenant may apply in the prescribed to financial form to the Minister for an adjustment to the financial loss or economic economic loss allowed in the order or to the extraordinary loss or operating costs allowed in the order, on the basis that the extraordinary operating operating costs used in the calculation of the financial loss, costs allowed economic loss or extraordinary operating costs were substantially higher or lower than the operating costs actually experienced in respect of the residential complex in a subsequent vear.

(2) In an order made by the Minister on an application Order re under subsection (1), the Minister shall order the maximum rent rent that may be charged for each rental unit in the residential chargeable complex that is under review and the earliest date that each each unit may take effect, provided that the earliest such date is not earlier than the day the application was made.

86.—(1) Where a landlord desires to increase the rent that Part may be charged for one or more rental units in a residential review complex by more than the amount permitted by section 71 because of capital expenditures the landlord has experienced or will experience in respect of such rental units, the landlord and the tenants of such rental units may jointly apply in the prescribed form to the Minister at least sixty days before the effective date of the first intended rent increase for an order permitting the landlord to do so.

(2) Where the residential complex contains more than Application twelve rental units an application under subsection (1) shall 25 per cent not include the tenants of more than 25 per cent of the rental of rental units in the residential complex.

limited to

Filing of capital cost revenue statement

(3) The landlord and the tenants shall file with the Minister a capital cost revenue statement in the prescribed form together with all documents that the parties rely upon in support of the application, including any written representations, and such other materials as may be prescribed not later than forty days before the effective date of the first rent increase applied for.

Determination by Minister of rent increase for each unit

- 87.—(1) Where an application is made by a landlord and one or more tenants under section 86, the Minister shall determine the rent increase for each rental unit which is subject to the application that is justified by,
 - (a) the operating cost allowance calculated in accordance with the formula set out in Schedule B hereto or, where the effective date of the first rent increase applied for is before the 1st day of January, 1987, the prescribed operating cost allowance;
 - (b) the findings of the Minister concerning capital expenditures that the landlord has experienced or will experience that affect each rental unit;
 - the prescribed allowances for management and administration in respect of capital expenditures; and
 - (d) the findings of the Minister concerning matters prescribed.

Order re maximum rent chargeable for each unit

(2) Where the Minister has determined the rent increase for each rental unit under subsection (1), the Minister shall order the maximum rent that may be charged for each rental unit under review and the earliest date that each may take effect.

Application for conditional determination

88.—(1) At any time before the first rental unit in a residential complex is occupied, a landlord may make an application in the prescribed form to the Minister for an order rate of return determining the treatment any proposed course of action that may affect the rate of return for the residential complex will receive on a subsequent application under section 74, and the Minister shall, by order, make any determination the Minister considers appropriate.

Subsequent application required

(2) An order under subsection (1) is conditional on the landlord making a subsequent application in the prescribed form to the Minister to review the order in the light of the actual course of action taken by the landlord in relation to the matters determined.

(3) An application under subsection (2) shall be made not Time for later than twelve months after the day the first rental unit is subsequent occupied.

application

(4) In an order made on an application under subsection Variance or (2), the Minister may vary or confirm the order made under of conditional subsection (1).

determination

(5) A determination in an order made under subsection (1) has no force or effect except as varied or confirmed by an determination order made on an application under subsection (2).

Effect of conditional

89.—(1) Prior to making a capital expenditure in respect Application of a residential complex or any rental unit therein, the landlord may, or the landlord and the tenants of the rental units order concerned jointly may, apply in the prescribed form to the Minister for a conditional order under subsection (2).

conditional

(2) In an application under subsection (1), the Minister Order by shall consider the proposed capital expenditure and shall by order declare the amount that will be allowed in respect of the expenditure in a subsequent application made under subsection 74 (1) (whole building review) or subsection 86 (1) (part building review), and where on the subsequent application the actual expenditure is substantially higher or lower than the projected expenditure the amounts allowed shall be decreased or increased proportionately.

90. An order of the Minister on an application made Where under this Part may award a rent increase greater than that requested in the application and where the order does so, the awarded than maximum rent for each rental unit affected by the order will be established in accordance with the terms of the order, but the rent charged for any such rental unit during the twelvemonth period following the effective date of the rent increase set out in the order shall not exceed the amount that would have been established for that rental unit had the rent increase requested in the application been awarded.

rent increase applied for

91.—(1) In this section, "chronically depressed rent" Definition means the gross potential rent for a residential complex where.

(a) the rent is more than 20 per cent below the gross potential rent for residential complexes that are comparable to the residential complex, in terms of number and type of rental units, quality and location: and

(b) the rate of return on the landlord's equity in respect of the residential complex is less than 10 per cent.

Allowance re chronically depressed rent

- (2) In an application made under section 74 not later than two years after the day this section comes into force in respect of a residential complex any part of which was occupied as a rental unit before the 1st day of January, 1976, where,
 - (a) the landlord has owned the residential complex throughout the period from the 1st day of November, 1982, to the day the application is made; or
 - (b) the landlord has acquired the residential complex by inheritance or through foreclosure proceedings from a previous landlord who had owned the residential complex throughout the period from the 1st day of November, 1982 to the date of its acquisition by the present landlord who in turn has owned it until the day the application is made,

and the Minister finds the gross potential rent is a chronically depressed rent, the Minister shall allow, in an order made under subsection 83 (1), an additional 2 per cent per year of the gross potential rent until the rent is no longer a chronically depressed rent.

Request for relief

(3) Where the Minister makes an order that provides for the allowance referred to in subsection (2), any tenant of a rental unit in the residential complex may make a request in the prescribed form to the Minister for relief from payment of the allowance.

Agreement providing for payment by Minister to landlord of allowance (4) If the Minister determines that the tenant making the request meets the prescribed criteria for relief, the Minister shall inform the landlord, who shall thereupon enter into an agreement containing the prescribed terms with the Minister that will provide for payment by the Minister to the landlord of that portion of the maximum rent for the affected rental unit that is attributable to the allowance referred to in subsection (2).

Where landlord fails to enter into agreement

(5) If the landlord fails to enter into the agreement referred to in subsection (4), the Minister shall order that the portion of the allowance referred to in subsection (2) that affects the maximum rent of the rental unit shall not be charged by the landlord and may provide in the order that the landlord repay to the tenant any amount that is owing to the tenant by reason of the order.

(6) Where a rental unit in a residential complex whose gross potential rent is found to be a chronically depressed rent under subsection (2) becomes occupied by a new tenant or tenant where an existing tenant of the rental unit agrees in writing thereto, the landlord, with the written approval of the Minister and without making an application under section 74 but subject to section 70, may increase the rent charged for that rental unit to the amount the rent would be for that rental unit at the time the gross potential rent for the residential complex has reached the level at which it is no longer a chronically depressed rent.

Where new tenant or existing consents

(7) Where on the application in the prescribed form of a tenant or on the Minister's own motion the Minister finds a of significant deterioration in the standard of maintenance and repair in respect of the rental unit or the residential complex in which it is situate has occurred after the date of the order mentioned in subsection (2), the Minister may order that the landlord no longer charge the allowance referred to in subsection (2) or any part thereof, or the increase in rent charged for a rental unit pursuant to subsection (6), and may declare the maximum rent that may be charged for the rental unit or units affected.

Deterioration in standard maintenance and repair

(8) An application or motion under subsection (7) may not Time for be made after the expiry of twelve months from the date that the rent for the rental unit is no longer chronically depressed.

92.—(1) An order made under this Part may provide for Phasing in of the phasing in over more than one year, in the prescribed manner, of any amount that is included (as a component of the total permitted rent increase) for the purpose of,

certain amounts that are components total rent increase

- (a) eliminating a financial loss or an economic loss the landlord has experienced or will experience;
- achieving equalization of rents charged for rental units within a residential complex;
- raising the gross potential rent for a residential complex to the level where the rent is no longer a chronically depressed rent within the meaning of section 91:
- (d) relieving the landlord from hardship under subsection 79 (2) or (5); or
- (e) recovering financing cost increases that are subject to phasing in under the prescribed rules,

and where provision is made for such phasing in, the Minister shall specify in the order the phased in amount for the initial year and the method of calculating the amount for any subsequent year or years in which the phased in amount is applicable.

Notice by Minister to landlord and entry in rent registry (2) The Minister shall calculate the phased in amount that is applicable in any year subsequent to the initial year and, not later than 120 days before the anniversary of the date of the first rent increase set out in the order, shall give notice in writing of the amount to the landlord who is affected and shall enter the phased in amount that is applicable for the year in the information recorded in the rent registry in respect of any rental unit that is affected thereby.

Notice to tenant

(3) The landlord shall include with a notice of rent increase given under section 5 any notice the landlord has received under subsection (2) that affects the amount of the rent increase set out in the notice given under section 5.

Increasing rent by phased in amount (4) In addition to the amount by which, under section 71, the landlord could increase the rent charged, the landlord may, without making an application under this Act, increase the rent for a rental unit by the phased in amount set out in the notice given under subsection (2) respecting that rental unit.

Decrease in financing costs
R.S.O. 1980, c. 452

93.—(1) Where a landlord has been awarded a rent increase under this Act or the *Residential Tenancies Act* that was justified, in whole or in part, by a rate increase in financing costs that took effect on or after the 1st day of August, 1985, if at the time the term of the mortgage or other instrument associated with the financing costs expires or is about to expire the Minister is of the opinion that the rate of interest required to be paid on a renewal or replacement of the mortgage or other instrument is lower by 1 per cent or more than the interest rate that justified the rent increase that was awarded, the Minister shall give notice thereof in writing to the landlord and the tenants of the residential complex that is affected.

Landlord to file documents with Minister (2) Not later than thirty days after the receipt of a notice under subsection (1), the landlord shall file with the Minister all documents that are relevant to the financing costs that the landlord will experience following the expiry of the term of the mortgage or other instrument.

Order that maximum rent be not increased (3) Unless the landlord makes an application under section 74 within the time set out therein, the Minister may, on the Minister's own motion, determine the amount of rent increase

that is no longer justified by reason of the lower interest rate and may order that the maximum rent chargeable for each rental unit in the residential complex as of the date of the order be not increased for a period of time determined in the prescribed manner.

(4) In making the determination under subsection (3) of the Matters to be amount of increase that is no longer justified, the Minister Consider Minister shall take into account only the matters in respect of which the Minister may make findings under clause 75 (h).

considered by

94.—(1) A tenant who desires to dispute an intended rent Application by tenant increase for his or her rental unit that does not exceed the disputing amount that the landlord is permitted to charge under section intended 71 may make an application in the prescribed form to the Minister for an order requiring the landlord to reduce the amount of the rent increase.

rent increase

(2) Where the intended rent increase includes a phased in amount under the authority of section 92 in addition to the amount the landlord is permitted to charge under section 71, added to the tenant may dispute in accordance with this section that portion of the intended rent increase that is composed of the amount the landlord is permitted to charge under section 71.

Where amount

(3) No rent increase shall be reduced under this section Exception when the rent increase results in a rent not exceeding the maximum permitted by an order by the Minister or the Board or by the Residential Tenancy Commission under the Residen- R.S.O. 1980, tial Tenancies Act, for the applicable rental unit.

(4) An application under this section shall be made not later than sixty days before the effective date of the intended rent increase.

application

(5) Where an application is made by a tenant under this sec- Considertion, in determining a rent increase for the rental unit, the Minister shall consider only the following matters:

where tenant applies

- Variations and the reasons therefor in the rent 1. being charged by the landlord for similar rental units within the residential complex.
- A change shown to have occurred in the standard of maintenance and repair or in the services and facilities provided that affects the rental unit.
- The degree to which the rental unit complies with 3. the maintenance standards established by the Residential Rental Standards Board.

Order setting maximum rent chargeable for the unit

- (6) Where the Minister has made a determination on the application,
 - (a) the Minister shall make an order setting the maximum rent that may be charged for the rental unit under review and the twelve-month period during which that maximum rent shall be in effect; and
 - (b) the Minister may order the landlord or tenant to pay to the other any sum of money that is owed to the other by reason of the decision of the Minister setting the maximum rent for the rental unit.

Application by landlord for equalization of rents (7) Where a tenant makes an application under subsection (1) on the grounds set out in paragraph 1 of subsection (5), the landlord may, not later than thirty days from the day the tenant's application was filed, make an application to the Minister under subsection 84 (1).

First date of intended variation

(8) Notwithstanding subsection 84 (2), the first date of intended variation in rent in a landlord application under subsection 84 (1) as provided in subsection (7) shall be the effective date of the rent increase disputed by the tenant in the application under subsection (1).

Tenant not liable to pay illegal rent increase **95.**—(1) No tenant is liable to pay any rent increase in excess of that permitted to be charged under this Act.

Remedy

(2) Where, on the application in the prescribed form of a tenant, the Minister determines that the landlord has charged the tenant an amount of rent that is in excess of that permitted by this Act or Part XI of the Residential Tenancies Act or by The Residential Premises Rent Review Act, 1975 (2nd Session), the Minister,

R.S.O. 1980, c. 452 1975 (2nd Sess.), c. 12

- (a) shall by order declare the maximum rent that may be charged for the rental unit concerned and the earliest date the maximum rent may take effect; and
- (b) where any excess rent paid by the tenant to the landlord is owed by the landlord to the tenant, shall, subject to subsection 13 (4), order the landlord to pay the excess rent owing to the tenant.

Where excess rent not to be repaid (3) Notwithstanding subsection (2), the Minister shall not make an order for the payment of excess rent charged for a rental unit prior to the 1st day of August, 1985, where the sum of the excess rent and the lawful rent for the rental unit does not exceed the rent that could have been charged for the rental unit in the period when the excess rent was paid, if, to

the amount charged for the rental unit on the 29th day of July, 1975, or at the earliest time thereafter for which the rent charged is known, is added all increases permitted under The Residential Premises Rent Review Act, 1975 (2nd Session) and Part XI of the Residential Tenancies Act.

1975 (2nd Sess.), c. 12 R.S.O. 1980, c. 452

96. Where a landlord makes an application under section Consequences 74, 86 or 89, the Minister may refuse to recognize all or part of neglect in maintaining of the capital expenditures or proposed capital expenditures residential claimed by the landlord where in the opinion of the Minister rental unit such expenditures are substantial and became necessary as a result of the landlord's ongoing deliberate neglect in maintaining the residential complex or any rental unit therein.

of neglect in

97.—(1) In this section.

Definitions

"basic unit rent" means the amount of rent charged for a rental unit exclusive of any separate charges;

- "separate charges" means the amounts of rent charged separately for any service, facility, privilege, accommodation or thing that the landlord provides for the tenant in respect of the tenant's occupancy of the rental unit.
- (2) In any order under this Act in which the Minister sets Minister may out or declares the maximum rent that may be charged for a declare basic rental unit, the Minister may separately set out or declare the unit rent and maximum basic unit rent and the maximum separate charges.

set out or separate charges

(3) Notwithstanding subsection 82 (2) or 84 (3), an order of Immediate the Minister made under subsection 83 (1) or 84 (5) may provide for the immediate equalization of separate charges for charges parking spaces or other separate charges as may be prescribed

(4) Notwithstanding anything in this Act, where a landlord Adding or and tenant agree that the landlord will provide any additional, or discontinue the provision of any, parking spaces, or any other service, facility, privilege, accommodation or thing as may be prescribed, in respect of the tenant's occupancy of a rental unit, the maximum rent which may be charged for the rental unit shall be increased or decreased in the prescribed manner.

discontinuing services, facilities, etc.

(5) Where the Minister by order under subsection 13 (3) Coerced determines that an agreement under subsection (4) has been not entered into as a result of some form of coercion, the agree- enforceable ment is not enforceable.

agreement

Not increase for purposes of s. 70

(6) An increase in rent charged in accordance with this section does not constitute an increase in rent charged for the purposes of section 70.

Where rental unit not rented for some time again becomes rented 98. Where a rental unit that has been rented at any time on or after the 29th day of July, 1975, has subsequently been not rented for any period of time and then again becomes rented, the maximum rent shall be the amount the landlord would have been entitled to charge if the unit had been rented during the period it was not rented and the landlord had given notice or notices of rent increase in the amount permitted by this Act, *The Residential Premises Rent Review Act*, 1975 (2nd Session) or Part XI of the Residential Tenancies Act.

1975 (2nd Sess.), c. 12 R.S.O. 1980, c. 452

Where rental unit rented for first time

99. The rent charged by a landlord for a rental unit when the unit is rented for the first time on or after the 29th day of July, 1975, shall be deemed to be the maximum rent for that unit as of the date it so becomes rented for the first time, except as otherwise provided in the regulations made under this Act.

Additional charges prohibited

- **100.**—(1) No landlord, or any person acting on behalf of the landlord shall, directly or indirectly, in respect of any rental unit,
 - (a) collect or attempt to collect from a tenant or prospective tenant of the rental unit any fee, premium, commission, bonus, penalty, key deposit or other like amount of money;
 - (b) require or attempt to require a prospective tenant to pay any consideration for goods or services as a condition for granting the tenancy, in addition to the rent the tenant is lawfully required to pay to the landlord; or
 - (c) rent any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent the landlord lawfully may charge for the rental unit.

Idem

- (2) No tenant or any person acting on behalf of the tenant shall, directly or indirectly,
 - (a) sublet a rental unit for a rent that is greater than the rent that is lawfully charged by the landlord for the rental unit;

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- (b) sublet any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, is a sum that is greater than the rent that is lawfully charged by the landlord for the rental unit:
- (c) collect or attempt to collect from any tenant or prospective tenant any consideration, fee, premium, commission, bonus, penalty, key deposit or other like amount of money, for subletting the rental unit or any portion thereof, for assigning a tenancy agreement for the rental unit or for otherwise parting with possession of the rental unit; or
- (d) require or attempt to require a prospective subtenant or assignee to pay any consideration for goods or services as a condition for the sublet or assignment in addition to the rent the subtenant or assignee is lawfully required to pay to the tenant or landlord.

PART VII

APPEALS

101.—(1) A landlord or a tenant directly affected by an Appeal from order of order may, within thirty days of the giving of the order of the order of the Minister Minister, appeal any order of the Minister disposing of an application made under this Act, or an order made on the Minister's own motion, by filing a notice or notices of appeal in the prescribed form with the Board, together with any documents that the party appealing relies upon in support of the appeal and which were not filed with the Minister on the application.

(2) The landlord and any tenant of a rental unit affected by Appeal of an order made under section 87 or an order made pursuant to part building review order a joint application under section 89 may appeal the order jointly or individually.

(3) Where a notice of appeal is filed with the Board, a copy Record of the notice shall be given by the Board to the Minister who shall thereupon forward to the Board,

- (a) the original or a true copy of the application or notice given under subsection 28 (1);
- (b) the original or a true copy of all documents and material filed in respect of the application or notice given under subsection 28 (1); and

(c) a certified copy of the order appealed from together with the summary of reasons for the order.

Filing of documents, etc., by respondent

(4) Where any person has filed a notice of appeal, the other parties to the appeal shall, within thirty days of the filing of the notice of appeal, file with the Board the documents that the parties intend to rely upon at the hearing of the appeal and which were not filed with the Minister on the application or in response to a notice given under subsection 28 (1).

Notice to parties

(5) After receiving a notice of appeal under subsection (1), the Board shall give a notice to the parties stating the date, place and time when the appeal will be heard.

Issues may be heard together (6) Where several different appeals have been made to the Board, and the Board is of the opinion that it would be appropriate to determine the issues raised by the appeals together, the Board may hear and determine the issues in dispute at a common hearing.

Issues may be heard separately (7) Where the Board is of the opinion that it would be appropriate to deal with some of the issues raised by an appeal at separate hearings, the Board may direct that some of the issues be dealt with separately and may set additional hearing dates for the determination of those issues.

Issues on appeal limited **102.**—(1) On the hearing of an appeal, the issues will be limited to those raised in the initial application, or raised in a matter brought on by the Minister's own motion, unless the Board otherwise allows.

Agreement to further limit issues

(2) Where all the parties to an appeal agree in writing, the Board may further limit the issues of the appeal to those issues agreed upon by the parties.

Evidence

(3) On the hearing of the appeal, the Board shall hear any evidence that is relevant to the issues, whether or not the evidence was tendered or was available on the initial application.

Burden of proof

(4) On the hearing of the appeal, the burden of proof lies on the party who made the initial application, or in the case of an appeal from an order made on the Minister's own motion, on the party bringing the appeal.

Hearing by single member **103.**—(1) Subject to subsection (2), an appeal shall be heard by a single member of the Board.

Hearing by panel of three Board members (2) The chairman shall assign a panel of three members of the Board to hear an appeal where any party to the appeal files a request in the prescribed form with the Board not later than thirty days after the day the notice of appeal is filed.

(3) Where, before the hearing of an appeal has com-menced, a party to the appeal who has filed a request under for panel subsection (2) files with the Board a withdrawal of the request of three in the prescribed form, the appeal may, with the consent of the Board the Board, be heard by a single member of the Board.

104.—(1) Where any party to an appeal files a request Pre-hearing therefor in the prescribed form with the Board or where the Board on its own initiative decides to do so, the Board may direct the parties to attend a pre-hearing conference, to be conducted by a single member of the Board, to discuss.

conference

- (a) the issues to be dealt with on the hearing of the appeal;
- (b) whether any person ought to be added or removed as a party to the appeal;
- (c) the rental units affected by the appeal;
- (d) where a request has been filed under subsection 103 (2), whether the appeal should be heard by one member or a panel of three members of the Board; and
- (e) any procedural matter that arises or may arise in connection with the appeal.

(2) The member of the Board who conducts the conference Recommenmay make such written recommendations as he or she considers necessary or advisable arising out of the matters discussed at the conference and any such recommendations shall be placed on the Board's record file pertaining to the appeal.

(3) Any party to the appeal is entitled to examine the rec- Examinaommendations made under subsection (2) and may submit tion of recommendarepresentations in respect thereof to the Board at the hearing tions of the appeal.

(4) The member of the Board who conducts the pre-hearing Board conference shall not hear the appeal or be a member of the to panel that hears the appeal.

member not hear appeal

(5) Notwithstanding subsection 105 (1), the Statutory R.S.O. 1980, Powers Procedure Act does not apply to a pre-hearing conferto apply ence held under this section.

Application R.S.O. 1980, c. 484

105.—(1) The Statutory Powers Procedure Act applies to proceedings by the Board in the exercise of a statutory power of decision.

Deemed compliance

(2) The giving to a party of a copy of a notice of appeal to the Board shall be deemed to be compliance with section 8 of R.S.O. 1980, the Statutory Powers Procedure Act.

c. 484 Procedure

106.—(1) Subject to the provisions of the *Statutory* Powers Procedure Act, and except as otherwise provided for by this Act, the Board may determine its own procedure for the conduct of hearings.

Policy guidelines, etc., available to public

(2) All policy guidelines or rules of procedure made by the Board under subsection (1) for the conduct of hearings shall be made available for examination by the public.

Matters Board to consider

- 107.—(1) In addition to any material, evidence or information submitted to the Board on an appeal, in hearing any appeal, the Board may consider,
 - any matter the Minister was entitled to consider on the application;
 - any material and documents submitted to the Minister on the application; and
 - such other matters as it deems necessary or advisable for the purpose of dealing with the appeal.

Board may investigate, etc.

- (2) The Board, in respect of any appeal, may,
 - (a) conduct any enquiry or inspection of documents or premises that the Board considers necessary; and
 - (b) question any person by telephone or otherwise.

Additional material

108.—(1) The Board may direct any party to the appeal to file such additional material as the Board considers necessary and the other parties shall have an opportunity to examine the additional material and to explain or refute it.

Where additional material not filed

- (2) Where any party to the appeal fails to comply with a direction of the Board under subsection (1), the Board may,
 - in the case of the appellant, refuse to make an order allowing the appeal or that part of the appeal relating to the failure to comply with the direction; and

- (b) in the case of any other party to the appeal, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.
- 109. At the hearing, the Board may question the parties Board may who are in attendance and any witnesses with a view to determining the truth concerning the matters in dispute.

110. In making its determination, the Board may consider Other any relevant information obtained by the Board in addition to information information the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

- 111. Upon completion of a hearing, the Board shall by Order of order.
 - (a) affirm the order of the Minister:
 - (b) vary the order of the Minister; or
 - substitute its own order for the order of the Minister,

and shall forthwith give a copy of the order to the parties to the appeal, together with reasons in writing for the order.

112. Where, within one year of the date of an order of the Power to Board, the member, or panel of members, of the Board who made the order is of the opinion that a serious error has been made, the member or panel of members may, on the member's or panel's own motion, rehear any appeal and may affirm, rescind, amend or replace the order.

113. An order of a Board member or an order of the Order of majority of the members of a panel of Board members shall member or majority be deemed to be an order of the Board.

of panel deemed order of Board

114. Where a member of a panel of Board members that Decisions by is assigned to hear an appeal ceases for any reason to be a members of member of the Board.

panel of members

(a) before the Board has made an order in respect of the appeal, the remaining two members of the panel may complete the hearing and make the order of the Board: or

(b) after the Board has made an order in respect of the appeal, the remaining two members of the panel may, in the circumstances set out in section 112, decide to rehear the appeal and those two members, together with a third member appointed by the chairman may, after holding the rehearing, affirm, rescind, amend or replace the order,

but if the two members do not agree,

- (c) on the order to be made in the case mentioned in clause (a), the appeal shall be reheard before a new panel of Board members; or
- (d) on whether to rehear the appeal in the case mentioned in clause (b), a rehearing shall not be held.

Appeal to Divisional Court **115.**—(1) Any party to an appeal under section 101 may, on a question of law, appeal an order of the Board to the Divisional Court.

Board entitled to be heard on appeal (2) The Board is entitled to be heard by counsel or otherwise upon the argument on any issue in an appeal under this section.

Power of Divisional Court on appeal

- (3) Where an appeal is brought under subsection (1), the Divisional Court shall hear and determine the appeal and may,
 - (a) affirm, rescind, amend or replace the decision or order; or
 - (b) remit the matter to the Board with the opinion of the Divisional Court.

and may make,

- (c) any other order in relation to the matter that it considers proper; and
- (d) any order, with respect to costs, that it considers proper.

Orders not stayed pending appeal **116.** An appeal from an order of the Minister or the Board does not stay the order pending the hearing of the appeal.

PART VIII

LICENSING OF RESIDENTIAL TENANCY CONSULTANTS

117.—(1) The Minister may grant upon payment of the prescribed fee a licence to every person whom the Minister, in tenancy accordance with the prescribed procedures and criteria, con-consultant siders qualified to act as a residential tenancy consultant and in accordance with the prescribed procedures may refuse, suspend or revoke any such licence.

(2) No person, for a fee, shall represent or appear as agent Licence for a landlord or a tenant in any proceedings under this Act unless the person,

- (a) is licensed under this Part as a residential tenancy consultant; or
- (b) is exempted by the regulations from the requirement to be licensed under this Part.
- (3) Any agreement that provides for the payment of a fee Where agreement to to a person, other than one who is licensed or exempt as mentioned in subsection (2), for representing or appearing as an agent for a landlord or a tenant in any proceedings under this Act is void.

PARTIX

MISCELLANEOUS

- 118. The Lieutenant Governor in Council may make regu-Regulations lations.
 - prescribing forms of applications to the Minister 1. and material to be furnished in respect of the application:
 - prescribing the form of a notice of appeal to the 2. Board:
 - prescribing procedural and interpretative rules and 3. policies to be observed by the Minister and the Board in the interpretation and administration of this Act or when exercising any power or discretion conferred under this Act:
 - prescribing, for the purposes of clause 4 (3) (a), rental units to which this Act applies;

- Bill 51
 - prescribing, for the purposes of section 5, the form of the notice of a rent increase;
 - prescribing, for the purposes of clause 13 (3) (d), 6. matters of concern in respect of which the Minister may make a determination;
 - 7. prescribing, for the purposes of subsection 21 (5), rules for the computation of time;
 - prescribing, the form of the notice mentioned in 8. subsection 28 (1):
 - 9. prescribing, for the purposes of subsection 33 (2), the form of a summary of reasons for an order of the Minister:
 - 10. prescribing, for the purposes of section 53, fees for the furnishing of copies of forms, notices or documents;
 - 11. prescribing, for the purposes of subsection 56 (1), the form of a request for information from the rent registry;
 - 12. prescribing, for the purposes of subsection 56 (1), rules for limiting the information recorded in the rent registry that shall be furnished to any person on request;
 - 13. prescribing, for the purposes of subsection 56 (2), fees for the furnishing of information from the rent registry;
 - 14. prescribing, for the purposes of subsection 57 (1), the form of the statement to be filed in connection with the rent registry;
 - 15. prescribing, for the purposes of clause 57 (2) (a), the date for filing a statement under subsection 57 (1);
 - 16. prescribing, for the purposes of subsection 58 (1), other information to be set out in the statement filed under subsection 57 (1);
 - 17. prescribing the percentage mentioned in subsections 59 (2) and (3);

- 18. prescribing, for the purposes of section 60, the form of notice to be given by the Minister in respect of information recorded in the rent registry;
- 19. prescribing, for the purposes of subsections 63 (4) and (5), the form of justification;
- 20. prescribing, for the purposes of subsection 74 (4), the form of a cost revenue statement;
- 21. prescribing, for the purposes of clause 75 (a) and clause 87 (1) (a), the operating cost allowance;
- 22. prescribing, for the purposes of clause 75 (d) and clause 87 (1) (c), the allowances for management and administration in respect of capital expenditures;
- 23. prescribing, for the purposes of clause 75 (j), matters in respect of which the Minister may make findings;
- 24. prescribing, for the purposes of clause 78 (1) (a), interest rates on capital expenditures;
- 25. prescribing, for the purposes of subsection 79 (7), interest rates to be allowed;
- 26. prescribing, for the purposes of paragraph 4 of subsection 82 (1), matters to be taken into account by the Minister;
- 27. prescribing, for the purposes of subsection 86 (3), the form of a capital cost revenue statement;
- 28. prescribing, for the purposes of subsection 91 (3), the form of a request for relief;
- 29. prescribing, for the purposes of subsection 91 (4), the criteria to be met to qualify for relief;
- 30. prescribing, for the purposes of subsection 91 (4), the terms of an agreement to be entered into under that subsection;
- 31. prescribing, for the purposes of section 92, the manner of phasing in amounts;

- 32. prescribing, for the purposes of subsection 93 (3), the manner of determining the period of time the maximum rent chargeable may not be increased;
- 33. prescribing, for the purposes of subsection 97 (3), separate charges which may be equalized immediately;
- 34. prescribing, for the purposes of subsection 97 (4), the manner in which the rent may be increased or decreased;
- 35. prescribing, for the purposes of section 99, the method of determining maximum rent;
- 36. prescribing persons or classes of persons that are exempt from the requirement to be licensed under Part VIII;
- 37. prescribing, for the purposes of subsection 117 (1), criteria for licensing a person as a residential tenancy consultant;
- 38. prescribing, for the purposes of subsection 117 (1), fees for licences under Part VIII;
- 39. prescribing, for the purposes of subsection 117 (1), procedures to be followed where a licence is proposed to be refused, suspended or revoked;
- 40. prescribing, for the purposes of subsection 121 (1), the allowed amount of a contingency fee;
- 41. prescribing, for the purposes of constructing the Building Operating Cost Index, the Table setting out the weighting and components thereof;
- defining any word or expression used in this Act that has not already been expressly defined in this Act;
- 43. prescribing anything that by this Act is to be or may be prescribed.
- 119. Substantial compliance with the requirements of this Act respecting the contents of forms, notices or documents is sufficient unless the Minister or the Board, as the case may be, is of the opinion that it would result in unfairness to any person.

Substantial compliance with forms, etc., sufficient

120. Any person may seek to secure and enforce the Enforcement rights established by this Act and may, without let or hindrance, organize or participate in an association the purpose in organiof which is to secure and enforce the rights established by this Act.

121.—(1) No agent who represents a landlord or a tenant Contingency in any proceedings under this Act or who assists a landlord or tenant in any matter arising under this Act shall charge or take a fee based on a proportion of any amount which has been or may be recovered, gained or saved in part or in whole through the efforts of the agent, where the proportion exceeds the prescribed amount.

fee limited

(2) Any agreement which provides for a fee prohibited in Contingency subsection (1) is void.

agreement

122.—(1) Any person who knowingly,

Offences

- (a) fails to obey an order of the Minister or the Board;
- (b) furnishes false or misleading information in any application, document, written representation or statement to the Minister under this Act or in any proceedings before the Board;
- (c) increases the rent charged for a rental unit where less than twelve months has elapsed since the date of the last rent increase:
- increases the rent charged for a rental unit by more than the amount referred to in section 71 unless authorized by the Minister or the Board to do so;
- (e) charges a higher rent for a rental unit than that permitted under an order of the Minister or the Board;
- (f) charges an amount that is in contravention of section 100;
- fails to file with the Minister the statement required under section 57, in respect of the rent registry; or
- (h) charges or takes a fee that is in contravention of subsection 121 (1),

and every director or officer of a corporation who knowingly concurs in the prohibited act is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

1986

Where corporation convicted

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided in subsection (1).

Limitation

(3) Proceedings shall not be commenced, in respect of an offence under subsection (1), after one year after the date on which the offence was, or is alleged to have been, committed.

Monetary sums rounded to nearest dollar **123.** Wherever under this Act a sum of money is required or permitted to be set out or expressed, the sum may be rounded to the nearest dollar and set out or expressed accordingly.

Proof of documents, etc.

124. In any prosecution for an offence under this Act, the production of any certificate, statement or document given to the Minister or to the Board under this Act or the regulations thereunder, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by such person or on such person's behalf, shall be received as *prima facie* proof that such certificate, statement or document was filed or delivered by or on behalf of that person or was made or signed by that person or on that person's behalf.

Moneys

- **125.** The moneys required for administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature.
- 126.—(1) Clauses 134 (1) (c) and (d) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, are repealed.
- (2) Subsection (1) shall be deemed to have come into force on the 1st day of August, 1985.
- **127.** Sections 60, 61, 70 to 73, 75 to 110, 114, 115, 117, 118, 120 to 133, clauses 134 (1) (a), (b), (f) and (g), subsections 134 (2) and (3) and subsection 135 (2) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, are repealed.
- 128. Section 7 of the Residential Complexes Financing Costs Restraint Act, 1982, as amended by the Statutes of Ontario, 1983, chapter 69, section 4, 1984, chapter 65, section 1 and 1985, chapter 15, section 4, is repealed and the following substituted therefor:

Repeal

7.—(1) This Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

(2) Despite subsection (1), this Act continues in force for Saving the purpose of hearing and making orders in respect of applications made to the Commission under section 126 of the Residential Tenancies Act on or before the day immediately R.S.O. 1980, preceding the day on which this Act is repealed by proclamation of the Lieutenant Governor and not finally disposed of by the Commission on or before that day, and to appeals therefrom.

129.—(1) Notwithstanding the repeal of the provisions Certain mentioned in section 127, those provisions shall be deemed to deemed to be continued in force for the purposes only of continuing and continued finally disposing of the following matters:

in force for purposes

1. An application made under the Residential Tenan- R.S.O. 1980, cies Act before the day this section comes into force.

- 2. An appeal of an order made under the Residential Tenancies Act.
- A court proceeding commenced before the day this section comes into force to which the Residential Tenancy Commission is a party.
- 4. A court proceeding mentioned in subsection 84 (4) of the Residential Tenancies Act commenced before the day this section comes into force.
- (2) An application under the Residential Tenancies Act Election to made before the day this section comes into force may, at any process under time before the hearing of the application has commenced, at this Act the written election of the applicant, be continued and finally R.S.O. 1980, disposed of as an application made under the corresponding provisions of this Act.

(3) For the purposes only of subsection (1), the Residential Residential Tenancy Commission shall continue and has all the powers Commission and jurisdiction conferred on it by the Residential Tenancies continued Act, and for that purpose all appointments of Commissioners purposes and Appeal Commissioners and designations of Commission- R.S.O. 1980, ers as members of the Board of Commissioners are confirmed c. 452 and continued until the expiration of the term of appointment or a day to be named by proclamation of the Lieutenant Governor, whichever is earlier.

Tenancy

Where appeal may be heard before single Appeal Commissioner (4) Notwithstanding subsection 117 (7) of the *Residential Tenancies Act*, an appeal from an order made under subsection 129 (2) of that Act may be heard before a single Appeal Commissioner, who need not be a member of the Board of Commissioners.

Commencement **130.**—(1) This Act, except subsection 71 (1) and section 128, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 128 comes into force on the day this Act receives Royal Assent.

Idem

(3) Subsection 71 (1) shall be deemed to have come into force on the 1st day of August, 1985.

Short title

131. The short title of this Act is the Residential Rent Regulation Act, 1986.

SCHEDULE A

(Clause 71 (1) (b))

The formula for calculating the Residential Complex Cost Index for the purposes of clause 71 (1) (b) is the greater of,

- (a) 2 per cent; or
- (b) 2 per cent plus 2/3 of the percentage increase in the three-year moving average of the Building Operating Cost Index, rounded to the nearest 1/10th of 1 per cent.

The Building Operating Cost Index shall be constructed in accordance with the weighting and components set out in the prescribed Table, with the weighting adjusted annually in relation to changes, based on a three-year moving average, in the components.

SCHEDULE B

(Clauses 75 (a) and 87 (1) (a))

The formula for calculating the operating cost allowance for the purposes of clauses 75 (a) and 87 (1) (a) is,

Operating Cost Allowance = Residential Complex Cost Index less 1 percentage point X the gross potential rent for the residential complex for the month immediately preceding the effective date of the first rent increase applied for X 12.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill 52

An Act to amend the Health Protection and Promotion Act, 1983

Mr. Pierce



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

This Bill amends the *Health Protection and Promotion Act, 1983* to require physicians, nurses and pharmacists to report to their local medical officer of health any cases they encounter of severe reaction to the DPT vaccine given to infants and small children to protect them against diphtheria, pertussis and tetanus.

Bill 52 1986

An Act to amend the Health Protection and Promotion Act. 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Health Protection and Promotion Act, 1983, being chapter 10, is amended by adding thereto the following section:
- **37a.**—(1) In this section, a "severe reaction" includes, but Interpretation is not limited to, persistent crying or screaming, shock or collapse, convulsions, high fever and temporary or permanent brain damage.

(2) A physician or a person registered under Part IV or VI Duty to of the *Health Disciplines Act* to practise nursing or pharmacy reactions to who, while providing professional services to a child who has immunization been immunized against diphtheria, pertussis and tetanus, forms the opinion that the child is suffering or has suffered from a severe reaction to the immunization shall, as soon as possible after forming the opinion, report thereon to the medical officer of health of the health unit in which the professional services are provided.

report R.S.O. 1980.

- 2. Subsection 38 (1) of the said Act is amended by striking out "or a virulent disease" in the fifth line and inserting in lieu thereof "a virulent disease or a severe reaction to an immunization against diphtheria, pertussis and tetanus".
- 3. Subsection 99 (2) of the said Act is amended by striking out "or" in the second line and by inserting after "disease" in the third line "or a severe reaction to an immunization against diphtheria, pertussis and tetanus".
- 4. This Act comes into force on the day it receives Royal Commence-Assent.
- 5. The short title of this Act is the Health Protection and Short title Promotion Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

ON

56

Bill53

An Act to amend the Labour Relations Act

Mr. Mackenzie



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to clarify that the *Labour Relations Act* applies to employees who are engaged in agricultural employment in an industrial or factory setting. Clause 2 (b) of the Act currently states that the Act does not apply "to a person employed in agriculture". This provision has been interpreted broadly by the Ontario Labour Relations Board to exclude from the Act persons whose employment relates to agriculture but who are employed in organizations that resemble industrial plants.

Bill 53 1986

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clause 2 (b) of the *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
 - (b) to a person employed in agriculture on a farm by a person who is a farmer;
 - (ba) to a person employed in hunting or trapping.
- 2. This Act comes into force on the day it receives Royal Commencement
- 3. The short title of this Act is the Labour Relations Amend-Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

420N 3

Bill54

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

The Hon. M. Elston

Minister of Health



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

This Act provides a legislative framework for the Ontario Drug Benefit Plan, under which the Minister pays operators of pharmacies, physicians and suppliers of substances for supplying prescription drugs and substances free of charge for certain classes of persons, including senior citizens and welfare recipients. The Plan is now governed by agreements with the Minister.

The Act gives broad discretion to the Lieutenant Governor in Council to make regulations concerning,

- (a) what prescription drugs and substances are to be listed under the Act;
- (b) who is to be eligible for the benefits under the Act;
- (c) how much the Minister will pay for the supplying of drugs and substances under the Act; and
- (d) what charges, if any, may be made directly to eligible persons.

The discretion under clause (c) above, allows for setting different amounts for different drug products, suppliers or eligible persons.

The Act provides that subject to the regulations, operators of pharmacies and physicians may charge the Minister, but no one else, when they supply listed drugs for eligible persons. There is provision for the Minister to agree in writing with an operator to pay an amount different from that in the regulations. The Minister is given discretion, if a physician says it is necessary, to allow a non-listed drug supplied for a particular eligible person to be treated as if it were a listed drug.

The Minister is authorized to enter into agreements to pay for the supplying of substances other than drugs (e.g. oxygen) on behalf of eligible persons. An amending provision of the Act, which would not take effect until a later date, to be proclaimed, repeals that authorization and treats acceptable persons supplying listed substances in the same way as operators dispensing listed drugs. The Lieutenant Governor in Council has discretion to set criteria of acceptability.

The Lieutenant Governor in Council is authorized to require reports respecting the cost of purchasing drugs from operators of pharmacies. The Minister is authorized to inspect the records of operators to insure the accuracy of information required to be provided.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.

Bill 54 1986

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"designated" means designated by the regulations;

"drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980, c. 196

"inspector" means a person appointed under section 9;

"listed drug" means a drug designated as a listed drug;

"listed substance" means a substance, other than a drug, designated as a listed substance;

"Minister" means the Minister of Health;

"operator of a pharmacy" means,

- (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or
- (b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the *Public Hospitals Act*;

"physician" means a person licensed to engage in the practice of medicine under Part III of the *Health Disciplines Act*;

"prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

"regulations" means the regulations made under this Act.

Eligible persons

2.—(1) A person who is a member of a designated class of persons is an eligible person.

Persons deemed eligible persons R.S.O. 1980, c. 151 (2) This Act applies to persons entitled to receive drug benefits under the *Family Benefits Act* and the regulations under it as if those persons were eligible persons.

Application of this Act

3. This Act applies in respect of the supplying of listed drugs for eligible persons unless that supplying is an insured service as defined in the *Health Insurance Act*.

R.S.O. 1980, c. 197

Billing prohibited

4.—(1) No operator of a pharmacy shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations.

Idem

(2) No physician shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug for an eligible person, unless the charge or payment is authorized by the regulations.

Payment of claim of operator

5.—(1) An operator of a pharmacy who submits to the Minister a claim for payment in respect of supplying a listed drug for an eligible person pursuant to a prescription is entitled to be paid by the Minister the amount provided for by the regulations.

Agreement re price

(2) The Minister may pay an operator of a pharmacy an amount different from the amount provided for by the regulations in respect of a claim under subsection (1) if the Minister has a written agreement to that effect with the operator.

Payment of claim of physician (3) A physician who submits to the Minister a claim for payment in respect of supplying a listed drug for an eligible person is entitled to be paid by the Minister the amount provided for by the regulations.

Information in claim

(4) The person submitting a claim under subsection (1) or (3) shall include in it the information prescribed by the regulations.

Unlisted drugs, special case **6.**—(1) If a physician informs the Minister that the proper treatment of a patient who is an eligible person requires the

administration of a drug that is not a listed drug, the Minister may make this Act apply in respect of the supplying of that drug as if it were a listed drug by so notifying the physician.

(2) An operator of a pharmacy is not liable for contravening Notice to this Act or the regulations in respect of supplying a drug referred to in subsection (1) unless the operator has received notice that this Act applies to that supplying.

7.—(1) The Minister may make an agreement with a sup- Agreement plier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician.

(2) Except as the agreement authorizes, the supplier shall Supplier not charge, or accept payment from, any person other than charge the Minister for supplying the listed substance to an eligible person under the direction of a physician.

8. No operator of a pharmacy shall refuse to supply a Refusal to listed drug for an eligible person in order to avoid the operation of a provision of this Act.

- **9.**—(1) The Minister may appoint inspectors for the pur- Inspectors poses of this section.
- (2) An inspector or any person acting under the inspector's Examine instructions may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician, if the records may be relevant to determine the accuracy and completeness of any information required to be submitted under this Act or the regulations.

(3) A person carrying out an inspection may, upon giving a Copies receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made with reasonable dispatch and the record shall be promptly thereafter returned.

(4) An inspector or a person acting under the inspector's Entry instructions may at any reasonable time, on producing proper identification, enter business premises where the inspector or person believes a record referred to in subsection (2) may be located for the purpose of an inspection.

10.—(1) A person who,

Offence

(a) contravenes section 4 (charges a person other than the Minister):

- (b) contravenes subsection 7 (2) (supplier charges contrary to agreement);
- (c) contravenes section 8 (refuses to dispense);
- (d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this Act or the regulations; or
- (e) obstructs a person carrying out an inspection under section 9.

and any director, officer, employee or agent of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

- **11.**—(1) The Lieutenant Governor in Council may make regulations,
 - (a) designating eligible classes of persons for the purposes of section 2;
 - (b) designating drugs as listed drugs;
 - (c) designating substances other than drugs that are listed substances;
 - (d) authorizing the charges that are permitted under section 4;
 - (e) prescribing the information to be included in a claim under subsection 5 (4);
 - (f) respecting the amounts payable by the Minister under section 5;
 - (g) requiring operators of pharmacies to file reports to the Minister concerning the cost to them of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made;
 - (h) requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;

- respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.
- (2) A regulation made under clause (1) (f) may,

Idem

- (a) provide for a specified amount, provide one or more methods for determining the amount or authorize the Minister to determine the amount payable in respect of each drug or drug product; and
- (b) provide for a specified amount or provide a method for determining a fee or allowance for dispensing a drug.
- (3) A regulation made under clause (1) (f) may establish Idem classes of operators of pharmacies, physicians, suppliers of listed substances and eligible persons and provide for an amount payable under subsection (2) in respect of each class.
- (4) A regulation made under this section may be general or Idem particular in its application.
- (5) A regulation is, if it so provides, effective with reference Retroactive to a period before it is filed.
- 12.—(1) Section 7 is repealed and the following substi- s. 7, tuted therefor:
- 7. This Act and the regulations apply to a supplier of a Payment for listed substance who meets the criteria prescribed in the regulations in respect of the supplying of the substance to an eligible person under the direction of a physician as if the supplier was an operator of a pharmacy and the substance was a listed drug.

(2) Clause 10 (1) (b) is repealed.

s. 10 (1) (b), repealed

- (3) Subsection 11 (1) is amended by adding thereto the fol- s. 11 (1), amended lowing clause:
 - (fa) prescribing criteria for the purposes of section 7 (application of Act to supplier).
- 13. This Act comes into force on a day to be named by Commenceproclamation of the Lieutenant Governor.
- **14.** The short title of this Act is the Ontario Drug Benefit Short title Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

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Bill54

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

The Hon. M. Elston

Minister of Health

1st Reading
2nd Reading

3rd Reading
Royal Assent

April 22nd, 1986

April 22nd, 1986



(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

This Act provides a legislative framework for the Ontario Drug Benefit Plan, under which the Minister pays operators of pharmacies, physicians and suppliers of substances for supplying prescription drugs and substances free of charge for certain classes of persons, including senior citizens and welfare recipients. The Plan is now governed by agreements with the Minister.

The Lieutenant Governor in Council is given broad discretion to make regulations concerning who is to be eligible for the benefits under the Act.

Manufacturers of drug products who wish their products to be listed are required to supply the same quantity of the same dosage form and strength of the products for the same price to all purchasers in Ontario other than those purchasing for hospital patients and provide to the Minister the prescribed information. The Lieutenant Governor in Council may prescribe additional conditions for listing.

The amount that the Minister is to pay operators of pharmacies for supplying listed drugs is based on the best available price of the drug product dispensed, a prescribed percentage of that best available price and in most cases, a dispensing fee equal to the lesser of the dispensing fee determined under section 7 and the operator's usual and customary dispensing fee as determined under the *Prescription Drug Cost Regulation Act*, 1986. Section 7 provides a mechanism for negotiating a dispensing fee. In the event that the negotiations fail, that dispensing fee is to be determined by the Lieutenant Governor in Council by regulation. There will be no dispensing fee for designated over the counter drugs and the dispensing fee for pharmacies in public hospitals will be prescribed by the regulations.

The amount that the Minister is to pay physicians for supplying listed drug products is to be prescribed by the regulations.

Subject to the regulations, operators of pharmacies and physicians may charge the Minister, but no one else, when they supply listed drugs for eligible persons. The Minister is given discretion, if a physician says it is necessary, to allow a non-listed drug product to be treated as if it were listed.

The Minister is authorized to enter into agreements to pay for the supplying of substances other than drugs (e.g. oxygen) on behalf of eligible persons.

Operators of pharmacies may elect not to accept payment under the Plan from the Minister, but if they do so they may not supply listed drug products to eligible persons.

The Lieutenant Governor in Council is authorized to require reports respecting the cost of drugs from operators of pharmacies and drug wholesalers and manufacturers. The Minister is authorized to inspect the records of operators of pharmacies and wholesalers and manufacturers of drugs to insure compliance with the Act.

The Act will also apply to designated pharmaceutical products. (See section 17).

Offences are created for contravening a provision of the Act or regulations and maximum penalties are imposed of \$5,000 for a first offence and \$10,000 for subsequent offences. The maximum fine for a corporation may be \$50,000.

Bill 54 1986

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

"designated" means designated by the regulations;

"drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980, c. 196

"inspector" means a person appointed under section 14;

"listed drug product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as a listed drug product;

"listed substance" means a substance, other than a drug, designated as a listed substance;

"Minister" means the Minister of Health;

"operator of a pharmacy" means,

- (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or
- (b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the *Public* R.S.O. 1980, *Hospitals Act*;

"physician" means a person licensed to engage in the practice of medicine under Part III of the *Health Disciplines Act*;

"prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

"regulations" means the regulations made under this Act.

Eligible persons **2.**—(1) A person who is a member of a designated class of persons is an eligible person.

Persons deemed eligible persons R.S.O. 1980, c. 151 (2) This Act applies to persons entitled to receive drug benefits under the *Family Benefits Act* and the regulations under it as if those persons were eligible persons.

Application of this Act R.S.O. 1980,

3. This Act applies in respect of the supplying of listed drug products for eligible persons unless that supplying is an insured service as defined in the *Health Insurance Act*.

Billing prohibited

c. 197

4.—(1) No operator of a pharmacy shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations.

Idem

(2) No physician shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person, unless the charge or payment is authorized by the regulations.

Exception

(3) Subsections (1) and (2) do not apply to an operator of a pharmacy or a physician who supplies a listed drug product for an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Payment of claim of operator

5.—(1) An operator of a pharmacy who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person pursuant to a prescription is entitled to be paid by the Minister the amount provided for under section 6.

Agreement re price (2) The Minister may pay an operator of a pharmacy an amount different from the amount provided for under section 6 in respect of a claim under subsection (1) if the Minister has a written agreement to that effect with the operator.

Payment of claim of physician (3) A physician who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person is entitled to be paid by the Minister the amount provided for by the regulations.

(4) The person submitting a claim under subsection (1) or Information (3) shall include in it the information prescribed by the regulations.

(5) Eligible persons shall be deemed to have authorized per- Deemed sons submitting claims under subsection (1) or (3) to include in the claims the information mentioned in subsection (4).

authorization

6.—(1) The amount the Minister shall pay under subsec- Amount tion 5 (1) in respect of a listed drug product is the sum of the to pay dispensing fee referred to in subsection (2) and the amount provided for by the regulations.

(2) The dispensing fee the Minister shall pay to operators of Dispensing pharmacies under subsection (1) for dispensing listed drug products for eligible persons shall be,

(a) where the pharmacy is operated in a hospital approved as a public hospital under the Public R.S.O. 1980, Hospitals Act, the amount prescribed by the regulations:

- (b) where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies, no dispensing fee; and
- (c) in all other cases, the lesser of,
 - (i) the amount determined under section 7, or
 - (ii) the amount the operator charges under subsection 6 (1) of the Prescription Drug Cost 1986, c. 28 Regulation Act, 1986 (usual and customary dispensing fee).

(3) Despite subsection (1), where the Minister is satisfied Exception that an operator of a pharmacy was not reasonably able to purchase any listed drug product of a drug at a price less than or equal to the amount provided for by the regulations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the cost to the operator of purchasing the least expensive listed drug product of the drug that is in the operator's inventory.

(4) Despite subsection (1), where a prescription includes a Idem direction that there be no substitutions and the Minister is satisfied that the operator of the pharmacy was not reasonably able to purchase the listed drug product prescribed at a price less than or equal to the amount provided for by the regu-

1986, c. 28

lations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the price designated under subsection 7 (1) of the *Prescription Drug Cost Regulation Act*, 1986 as the best available price for that product.

Idem

(5) For the purpose of subsection (3), the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations.

Definition

7.—(1) In this section, "Association" means the Ontario Pharmacists Association.

Determination of dispensing (2) The Minister and the Association may by agreement, with or without referring the matter to a fee negotiating committee, determine the dispensing fee the Minister shall pay to operators of pharmacies under subsection 6 (2).

Idem

(3) An agreement made under subsection (2) may establish classes of operators of pharmacies and provide for an amount payable in respect of each class.

Fee negotiating committee

- (4) There may be established from time to time as provided under subsection (6) a fee negotiating committee to be composed of,
 - (a) three voting members appointed by the Minister;
 - (b) three voting members appointed by the Association; and
 - (c) a chairman, who shall not have a vote, to be appointed jointly by the Minister and the Association.

Remuneration of chairman

(5) The remuneration and expenses of the chairman shall be paid for by the Ministry of Health.

Mandatory negotiation (6) The Minister or the Association may, by notice in writing to the other, require that negotiation of the dispensing fee be conducted by a fee negotiating committee.

Appointment of committee

(7) Not later than seven days after the notice has been received, the Minister and the Association shall each appoint three persons to serve as members of the fee negotiating committee and shall jointly appoint a chairman of the committee.

Negotiation

(8) The committee shall begin its negotiations as soon as reasonably possible on a date to be named by the chairman.

(9) If, after both sides on the committee have negotiated in Negotiations good faith, the Minister or the Association believes that the committee's negotiations have reached an impasse, that person, by written notice to the chairman and the other person, may request that the chairman recommend a dispensing fee to the committee.

(10) The chairman may obtain and use any relevant infor- Chairman's mation that the chairman believes may be useful in formulating the recommendation.

(11) The chairman shall recommend a dispensing fee to the committee within thirty days after being requested to do so and shall provide the committee with the information upon which the recommendation was based.

(12) The committee shall resume its negotiations within seven days after receiving the chairman's recommendation.

Negotiations

(13) At any time after the committee resumes its negotia- Recommentions under subsection (12), the Minister or the Association may make public the recommendation and the information upon which it was based, after first giving the other person twenty-four hours written notice of the intention to do so.

dations made

(14) If, after both sides on the committee have resumed Terminate negotiations in good faith, the Minister or the Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations.

negotiations

(15) If, at any time in the negotiating process, a majority of Committee the committee, including at least two persons appointed by the Minister and at least two persons appointed by the Association, agree on the appropriate dispensing fee, the chairman on behalf of the committee shall submit that dispensing fee to the Minister and to the Association as the committee's proposed dispensing fee.

(16) The Minister and the Association shall in writing notify Notice of each other of their acceptance or rejection of the committee's proposed dispensing fee within fourteen days after receiving it.

(17) If the Minister or the Association rejects the commit-Rejection of tee's proposed dispensing fee, the committee shall resume its dispensing negotiations within seven days thereafter and this section applies as if the committee had not proposed a dispensing fee.

Dispensing fee

- (18) The dispensing fee for the purpose of subsection 6 (2) shall be,
 - (a) if the Minister and the Association both accept the committee's proposed dispensing fee, the dispensing fee proposed;
 - (b) if the Minister and the Association otherwise agree to a dispensing fee, the dispensing fee agreed upon; or
 - (c) in all other cases, the dispensing fee provided for by the regulations.

Agreement

(19) The Minister and the Association may enter into a written agreement respecting any aspect of the negotiation of the dispensing fee, and in the event of a conflict between a provision of the agreement and a provision of this section, the agreement prevails.

Unlisted drugs, special case **8.**—(1) If a physician informs the Minister that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there is not a listed drug product, the Minister may make this Act apply in respect of the supplying of that drug as if it were a listed drug product by so notifying the physician.

Notice to operator

(2) An operator of a pharmacy is not liable for contravening this Act or the regulations in respect of supplying a drug referred to in subsection (1) unless the operator has received notice from the physician or from the Minister that this Act applies to that supplying.

Agreement re listed substance

9.—(1) The Minister may make an agreement with a supplier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician.

Supplier not to charge

(2) Except as the agreement authorizes, the supplier shall not charge, or accept payment from, any person other than the Minister for supplying the listed substance to an eligible person under the direction of a physician.

Exception

(3) Subsection (2) does not apply to a supplier of a listed substance who supplies the listed substance to an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Refusal to dispense prohibited **10.** No operator of a pharmacy shall refuse to supply a listed drug product for an eligible person in order to avoid the

operation of a provision of this Act but an operator may refuse to supply a listed drug product for an eligible person if the proper exercise of professional judgment so requires.

11.—(1) An operator of a pharmacy may notify the Minis- Opting out ter that the operator elects not to accept payment from the Minister under section 5.

(2) Beginning ninety days after the day the Minister Idem receives the notice under subsection (1), the operator is not entitled to payment from the Minister under section 5 and is not required to supply listed drug products for eligible persons under section 10.

12. The Minister may consult with persons or organiza- Minister to tions representing eligible persons, manufacturers of listed drug products, operators of pharmacies, physicians and suppliers of listed substances with respect to the amounts payable by the Minister and other matters of mutual concern arising out of this Act and the regulations.

13.—(1) No person who administers this Act or the regu-Confidenlations shall disclose any information about an eligible person or about the supplying of listed drug products to an eligible person.

- (2) Subsection (1) does not apply to the disclosure of Exception information,
 - (a) to the person's counsel;
 - (b) with the consent of the eligible person;
 - in connection with the administration of this Act, (c) the Prescription Drug Cost Regulation Act, 1986, 1986, c. 28 the Health Disciplines Act, the Health Insurance R.S.O. 1980, Act, the Ministry of Health Act, any other Act 280, 93, 400 administered by the Minister of Health, the Coroners Act, the Provincial Offences Act or the Criminal Code (Canada), or any regulations made R.S.C. 1970. thereunder; or

- (d) if the communication does not disclose the identity of a drug that was prescribed or supplied for an identified eligible person.
- **14.**—(1) The Minister may appoint inspectors for the pur- Inspectors poses of this section.

Examine books

(2) An inspector may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of the operator or physician or of information they are required to submit under this Act or the regulations, or in determining whether they have complied with this Act and the regulations.

Idem

(3) An inspector may examine records, in whatever form, in the possession or under the control of a wholesaler or manufacturer, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of an operator of a pharmacy or physician or in determining whether the wholesaler or manufacturer have complied with this Act and the regulations.

Copies

(4) In carrying out an inspection under subsection (2), the inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Idem

(5) In carrying out an inspection under subsection (3), the inspector may, upon giving a receipt therefor, take away a sales record or a marketing record or both for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Entry

(6) An inspector may at any reasonable time, on producing proper identification, enter business premises where the inspector believes a record referred to in subsection (2) or (3) may be located for the purpose of an inspection.

Offence

- **15.**—(1) A person who,
 - (a) contravenes section 4 (charges a person other than the Minister);
 - (b) contravenes subsection 9 (2) (supplier charges contrary to agreement);
 - (c) contravenes section 10 (refuses to dispense);
 - (d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this Act or the regulations; or

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(e) obstructs a person carrying out an inspection under section 14.

and any director or officer of a corporation who authorizes or permits such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$5,000 for a first offence and \$10,000 for a second and subsequent offence.

- (2) The maximum penalty that may be imposed upon a cor- Idem poration is \$50,000 and not as provided in subsection (1).
- **16.**—(1) A manufacturer of a drug product that is desig-Conditions nated or being considered for designation as a listed drug product shall,

- (a) supply that drug product for the same price to all purchasers in Ontario, other than public hospitals purchasing solely for use in the treatment of patients and out-patients in the hospital, where the purchasers purchase the same quantity of individual units of the drug product in the same dosage form and strength; and
- (b) give to the Minister, on request, the information prescribed by the regulations concerning the production and sale of the drug product.
- (2) Where a manufacturer of a drug product contravenes Idem this section or obstructs a person carrying out an inspection under section 14, the Lieutenant Governor in Council may refuse to designate the drug product as a listed drug product, or, where it is already so designated, may remove that designation.

17.—(1) This Act applies with necessary modifications in Pharmarespect of designated pharmaceutical products and, for the products purpose, a designated pharmaceutical product shall be deemed to be a listed drug product.

(2) Section 16 and subsections 18 (2) to (5) do not apply for Application the purpose of subsection (1).

of s. 16 and subss. 18 (2-5)

- 18.—(1) The Lieutenant Governor in Council may make Regulations regulations,
 - (a) designating eligible classes of persons for the purposes of section 2;

- (b) prescribing conditions to be met by products or by manufacturers of products in order for the products to be eligible for designation as listed drug products;
- (c) designating a product as a listed drug product where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be so designated if it or its manufacturer has not met the conditions described in clause (b);
- (d) designating substances other than drugs that are listed substances;
- (e) authorizing the charges that are permitted under section 4;
- (f) prescribing the information to be included in a claim under subsection 5 (4);
- (g) respecting the amounts payable by the Minister under section 5;
- (h) requiring operators of pharmacies and manufacturers and wholesalers of listed drug products to file reports to the Minister concerning the cost to operators of pharmacies and wholesalers of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made;
- (i) requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;
- (j) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product for the purpose of subsection 6 (3);
- (k) designating listed drug products that do not require a prescription for sale for the purpose of clause 6 (2) (b);
- (1) designating pharmaceutical products for the purpose of section 17;

11

- (m) respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.
- (2) In determining the amounts payable by the Minister Idem under subsections 5 (1) and (2), the Lieutenant Governor in Council shall prescribe from time to time the best available price of the drug.
 - (a) as determined by the Minister from such sampling as the Minister considers appropriate; or
 - (b) as estimated by the Minister, if the Minister considers the information reasonably available to the Minister is insufficient for the purpose of ascertaining the best available price,

and prescribe a percentage of the best available price, not less than 10 per cent nor greater than 20 per cent, to be added to it.

(3) In determining the best available price for a drug, no Idem account shall be taken of a purchase of the drug for use solely in the treatment of hospital patients and out-patients.

(4) In this section, "best available price" for a drug in a particular dosage form and strength, means the lowest amount, calculated per gram, milliliter, tablet, capsule or other appropriate unit, for which a listed drug product of that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario and in calculating that amount, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

- (5) Subsection (2) does not apply in respect of listed drug Exception products designated by the regulations for the purpose of clause 6 (2) (b).
- (6) A regulation made under this section may be general or Regulations particular in its application.
- (7) A regulation is, if it so provides, effective with reference Retroactive to a period before it is filed.

Commencement 19. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

20. The short title of this Act is the *Ontario Drug Benefit Act*, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

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Bill54

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

The Hon. M. Elston

Minister of Health

1st Reading

April 22nd, 1986

2nd Reading

April 22nd, 1986

3rd Reading
Royal Assent



(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

This Act provides a legislative framework for the Ontario Drug Benefit Plan, under which the Minister pays operators of pharmacies, physicians and suppliers of substances for supplying prescription drugs and substances free of charge for certain classes of persons, including senior citizens and welfare recipients. The Plan is now governed by agreements with the Minister.

The Lieutenant Governor in Council is given broad discretion to make regulations concerning who is to be eligible for the benefits under the Act.

Manufacturers of drug products who wish their products to be listed are required to supply the same quantity of the same dosage form and strength of the products for the same price to all purchasers in Ontario other than those purchasing for hospital patients and provide to the Minister the prescribed information. The Lieutenant Governor in Council may prescribe additional conditions for listing.

The amount that the Minister is to pay operators of pharmacies for supplying listed drugs is based on the best available price of the drug product dispensed, a prescribed percentage of that best available price and in most cases, a dispensing fee equal to the lesser of the dispensing fee determined under section 7 and the operator's usual and customary dispensing fee as determined under the *Prescription Drug Cost Regulation Act*, 1986. Section 7 provides a mechanism for negotiating a dispensing fee. In the event that the negotiations fail, that dispensing fee is to be determined by the Lieutenant Governor in Council by regulation. There will be no dispensing fee for designated over the counter drugs and the dispensing fee for pharmacies in public hospitals will be prescribed by the regulations.

The amount that the Minister is to pay physicians for supplying listed drug products is to be prescribed by the regulations.

Subject to the regulations, operators of pharmacies and physicians may charge the Minister, but no one else, when they supply listed drugs for eligible persons. The Minister is given discretion, if a physician says it is necessary, to allow a non-listed drug product to be treated as if it were listed.

The Minister is authorized to enter into agreements to pay for the supplying of substances other than drugs (e.g. oxygen) on behalf of eligible persons.

Operators of pharmacies may elect not to accept payment under the Plan from the Minister, but if they do so they may not supply listed drug products to eligible persons.

The Lieutenant Governor in Council is authorized to require reports respecting the cost of drugs from operators of pharmacies and drug wholesalers and manufacturers. The Minister is authorized to inspect the records of operators of pharmacies and wholesalers and manufacturers of drugs to insure compliance with the Act.

Offences are created for contravening a provision of the Act or regulations and maximum penalties are imposed of \$5,000 for a first offence and \$10,000 for subsequent offences. The maximum fine for a corporation may be \$50,000.

Bill 54 1986

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

"designated" means designated by the regulations;

"drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980, c. 196

"inspector" means a person appointed under section 14;

"listed drug product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as a listed drug product;

"listed substance" means a substance, other than a drug, designated as a listed substance;

"Minister" means the Minister of Health;

"operator of a pharmacy" means,

- (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or
- (b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the *Public* R.S.O. 1980. *Hospitals Act*;

"physician" means a person licensed to engage in the practice of medicine under Part III of the *Health Disciplines Act*; "prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

"regulations" means the regulations made under this Act.

Eligible persons

2.—(1) A person who is a member of a designated class of persons is an eligible person.

Persons deemed eligible persons R.S.O. 1980. c. 151

(2) This Act applies to persons entitled to receive drug benefits under the Family Benefits Act and the regulations under it as if those persons were eligible persons.

Application of this Act

- R.S.O. 1980,
- 3. This Act applies in respect of the supplying of listed drug products for eligible persons unless that supplying is an insured service as defined in the Health Insurance Act.

Billing prohibited

c. 197

4.—(1) No operator of a pharmacy shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations.

Idem

(2) No physician shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person, unless the charge or payment is authorized by the regulations.

Exception

(3) Subsections (1) and (2) do not apply to an operator of a pharmacy or a physician who supplies a listed drug product for an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Payment of claim of operator

5.—(1) An operator of a pharmacy who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person pursuant to a prescription is entitled to be paid by the Minister the amount provided for under section 6.

Agreement re price

(2) The Minister may pay an operator of a pharmacy an amount different from the amount provided for under section 6 in respect of a claim under subsection (1) if the Minister has a written agreement to that effect with the operator.

Payment of claim of physician

(3) A physician who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person is entitled to be paid by the Minister the amount provided for by the regulations.

(4) The person submitting a claim under subsection (1) or Information (3) shall include in it the information prescribed by the regulations.

(5) Eligible persons shall be deemed to have authorized persons submitting claims under subsection (1) or (3) to include in the claims the information mentioned in subsection (4).

Deemed authorization

6.—(1) The amount the Minister shall pay under subsec- Amount tion 5 (1) in respect of a listed drug product is the sum of the dispensing fee referred to in subsection (2) and the amount provided for by the regulations.

to pay

(2) The dispensing fee the Minister shall pay to operators of Dispensing pharmacies under subsection (1) for dispensing listed drug products for eligible persons shall be,

(a) where the pharmacy is operated in a hospital approved as a public hospital under the Public R.S.O. 1980. Hospitals Act, the amount prescribed by the regulations:

- (b) where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies, no dispensing fee; and
- (c) in all other cases, the lesser of,
 - (i) the amount determined under section 7, or
 - (ii) the amount the operator charges under subsection 6 (1) of the Prescription Drug Cost 1986, c. ... Regulation Act, 1986 (usual and customary dispensing fee).

(3) Despite subsection (1), where the Minister is satisfied Exception that an operator of a pharmacy was not reasonably able to purchase any listed drug product of a drug at a price less than or equal to the amount provided for by the regulations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the cost to the operator of purchasing the least expensive listed drug product of the drug that is in the operator's inventory.

(4) Despite subsection (1), where a prescription includes a Idem direction that there be no substitutions and the Minister is satisfied that the operator of the pharmacy was not reasonably able to purchase the listed drug product prescribed at a price less than or equal to the amount provided for by the regu-

1986, c. ...

lations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the price designated under subsection 7 (1) of the *Prescription Drug Cost Regulation Act*, 1986 as the best available price for that product.

Idem

(5) For the purpose of subsection (3), the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations.

Definition

7.—(1) In this section, "Association" means the Ontario Pharmacists Association.

Determination of dispensing fee (2) The Minister and the Association may by agreement, with or without referring the matter to a fee negotiating committee, determine the dispensing fee the Minister shall pay to operators of pharmacies under subsection 6 (2).

Idem

(3) An agreement made under subsection (2) may establish classes of operators of pharmacies and provide for an amount payable in respect of each class.

Fee negotiating committee

- (4) There may be established from time to time as provided under subsection (6) a fee negotiating committee to be composed of,
 - (a) three voting members appointed by the Minister;
 - (b) three voting members appointed by the Association; and
 - (c) a chairman, who shall not have a vote, to be appointed jointly by the Minister and the Association.

Remuneration of chairman (5) The remuneration and expenses of the chairman shall be paid for by the Ministry of Health.

Mandatory negotiation

(6) The Minister or the Association may, by notice in writing to the other, require that negotiation of the dispensing fee be conducted by a fee negotiating committee.

Appointment of committee (7) Not later than seven days after the notice has been received, the Minister and the Association shall each appoint three persons to serve as members of the fee negotiating committee and shall jointly appoint a chairman of the committee.

Negotiation

(8) The committee shall begin its negotiations as soon as reasonably possible on a date to be named by the chairman.

(9) If, after both sides on the committee have negotiated in Negotiations good faith, the Minister or the Association believes that the committee's negotiations have reached an impasse, that person, by written notice to the chairman and the other person, may request that the chairman recommend a dispensing fee to the committee

(10) The chairman may obtain and use any relevant infor- Chairman's mation that the chairman believes may be useful in formulating the recommendation.

(11) The chairman shall recommend a dispensing fee to the Idem committee within thirty days after being requested to do so and shall provide the committee with the information upon which the recommendation was based.

(12) The committee shall resume its negotiations within Negotiations seven days after receiving the chairman's recommendation.

(13) At any time after the committee resumes its negotia- Recommentions under subsection (12), the Minister or the Association may make public the recommendation and the information upon which it was based, after first giving the other person twenty-four hours written notice of the intention to do so.

dations made

(14) If, after both sides on the committee have resumed Terminate negotiations in good faith, the Minister or the Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations.

negotiations

(15) If, at any time in the negotiating process, a majority of Committee the committee, including at least two persons appointed by the Minister and at least two persons appointed by the Association, agree on the appropriate dispensing fee, the chairman on behalf of the committee shall submit that dispensing fee to the Minister and to the Association as the committee's proposed dispensing fee.

(16) The Minister and the Association shall in writing notify Notice of each other of their acceptance or rejection of the committee's proposed dispensing fee within fourteen days after receiving it.

acceptance

(17) If the Minister or the Association rejects the commit-Rejection of tee's proposed dispensing fee, the committee shall resume its negotiations within seven days thereafter and this section fee applies as if the committee had not proposed a dispensing fee.

Dispensing fee

- (18) The dispensing fee for the purpose of subsection 6 (2) shall be,
 - (a) if the Minister and the Association both accept the committee's proposed dispensing fee, the dispensing fee proposed;
 - (b) if the Minister and the Association otherwise agree to a dispensing fee, the dispensing fee agreed upon; or
 - (c) in all other cases, the dispensing fee provided for by the regulations.

Agreement

(19) The Minister and the Association may enter into a written agreement respecting any aspect of the negotiation of the dispensing fee, and in the event of a conflict between a provision of the agreement and a provision of this section, the agreement prevails.

Unlisted drugs, special case

8.—(1) If a physician informs the Minister that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there is not a listed drug product, the Minister may make this Act apply in respect of the supplying of that drug as if it were a listed drug product by so notifying the physician.

Notice to operator

(2) An operator of a pharmacy is not liable for contravening this Act or the regulations in respect of supplying a drug referred to in subsection (1) unless the operator has received notice from the physician or from the Minister that this Act applies to that supplying.

Agreement re listed substance

9.—(1) The Minister may make an agreement with a supplier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician.

Supplier not to charge (2) Except as the agreement authorizes, the supplier shall not charge, or accept payment from, any person other than the Minister for supplying the listed substance to an eligible person under the direction of a physician.

Exception

(3) Subsection (2) does not apply to a supplier of a listed substance who supplies the listed substance to an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Refusal to dispense prohibited 10. No operator of a pharmacy shall refuse to supply a listed drug product for an eligible person in order to avoid the

operation of a provision of this Act but an operator may refuse to supply a listed drug product for an eligible person if the proper exercise of professional judgment so requires.

11.—(1) An operator of a pharmacy may notify the Minis- Opting out ter that the operator elects not to accept payment from the Minister under section 5

(2) Beginning ninety days after the day the Minister Idem receives the notice under subsection (1), the operator is not entitled to payment from the Minister under section 5 and is not required to supply listed drug products for eligible persons under section 10.

12. The Minister may consult with persons or organiza- Minister to tions representing eligible persons, manufacturers of listed drug products, operators of pharmacies, physicians and suppliers of listed substances with respect to the amounts payable by the Minister and other matters of mutual concern arising out of this Act and the regulations.

13.—(1) No person who administers this Act or the regu-Confidenlations shall disclose any information about an eligible person or about the supplying of listed drug products to an eligible person.

- (2) Subsection (1) does not apply to the disclosure of Exception information.
 - (a) to the person's counsel;
 - (b) with the consent of the eligible person;
 - (c) in connection with the administration of this Act. the Prescription Drug Cost Regulation Act, 1986, 1986, c. ... the Health Disciplines Act, the Health Insurance R.S.O. 1980. Act, the Ministry of Health Act, any other Act cc. 196, 197, 280, 93, 400 administered by the Minister of Health, the Coroners Act, the Provincial Offences Act or the Criminal Code (Canada), or any regulations made R.S.C. 1970. thereunder:

- (d) if the communication does not disclose the identity of a drug that was prescribed or supplied for an identified eligible person.
- **14.**—(1) The Minister may appoint inspectors for the pur- Inspectors poses of this section.

Examine books

(2) An inspector may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of the operator or physician or of information they are required to submit under this Act or the regulations, or in determining whether they have complied with this Act and the regulations.

Idem

(3) An inspector may examine records, in whatever form, in the possession or under the control of a wholesaler or manufacturer, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of an operator of a pharmacy or physician or in determining whether the wholesaler or manufacturer have complied with this Act and the regulations.

Copies

(4) In carrying out an inspection under subsection (2), the inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Idem

(5) In carrying out an inspection under subsection (3), the inspector may, upon giving a receipt therefor, take away a sales record or a marketing record or both for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Entry

(6) An inspector may at any reasonable time, on producing proper identification, enter business premises where the inspector believes a record referred to in subsection (2) or (3) may be located for the purpose of an inspection.

Offence

15.—(1) A person who,

- (a) contravenes section 4 (charges a person other than the Minister);
- (b) contravenes subsection 9 (2) (supplier charges contrary to agreement);
- (c) contravenes section 10 (refuses to dispense);
- (d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this Act or the regulations; or

(e) obstructs a person carrying out an inspection under section 14

and any director or officer of a corporation who authorizes or permits such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$5,000 for a first offence and \$10,000 for a second and subsequent offence.

- (2) The maximum penalty that may be imposed upon a cor- Idem poration is \$50,000 and not as provided in subsection (1).
- **16.**—(1) A manufacturer of a drug product that is desig-Conditions nated or being considered for designation as a listed drug product shall.

- (a) supply that drug product for the same price to all purchasers in Ontario, other than public hospitals purchasing solely for use in the treatment of patients and out-patients in the hospital, where the purchasers purchase the same quantity of individual units of the drug product in the same dosage form and strength; and
- (b) give to the Minister, on request, the information prescribed by the regulations concerning the production and sale of the drug product.
- (2) Where a manufacturer of a drug product contravenes Idem this section or obstructs a person carrying out an inspection under section 14, the Lieutenant Governor in Council may refuse to designate the drug product as a listed drug product, or, where it is already so designated, may remove that designation.

- 17.—(1) The Lieutenant Governor in Council may make Regulations regulations.
 - (a) designating eligible classes of persons for the purposes of section 2;
 - prescribing conditions to be met by products or by manufacturers of products in order for the products to be eligible for designation as listed drug products:
 - designating a product as a listed drug product where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be so designated if it or its manufac-

turer has not met the conditions described in clause (b);

- (<u>d</u>) designating substances other than drugs that are listed substances;
- (\underline{e}) authorizing the charges that are permitted under section 4;
- (<u>f</u>) prescribing the information to be included in a claim under subsection 5 (4);
- (g) respecting the amounts payable by the Minister under section 5;
- (h) requiring operators of pharmacies and manufacturers and wholesalers of listed drug products to file reports to the Minister concerning the cost to operators of pharmacies and wholesalers of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made;
- (i) requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;
- (j) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product for the purpose of subsection 6 (3);
- (k) designating listed drug products that do not require a prescription for sale for the purpose of clause 6 (2) (b);
- (<u>l</u>) respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.

Idem

(2) In determining the amounts payable by the Minister under subsections 5 (1) and (2), the Lieutenant Governor in Council shall ascertain and prescribe from time to time the best available price of the drug and prescribe a percentage of the best available price, not less than 10 per cent nor greater than 20 per cent, to be added to it.

Idem

(3) Where the Lieutenant Governor in Council is prescribing the best available price of a drug under subsection (2) and the drug is an interchangeable product, as defined in the

Prescription Drug Cost Regulation Act, 1986, the amount pre- 1986, c. ... scribed shall be the best available price of the least expensive product that is interchangeable with it.

- (4) In determining the best available price for a drug, no Idem account shall be taken of a purchase of the drug for use solely in the treatment of hospital patients and out-patients.
- (5) In this section, "best available price" for a drug in a particular dosage form and strength, means the lowest price amount, calculated per gram, milliliter, capsule or other appropriate unit, for which that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario and in calculating that amount, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

- (6) Subsection (2) does not apply in respect of listed drug Exception products designated by the regulations for the purpose of clause 6 (2) (b).
- (7) A regulation made under this section may be general or Regulations particular in its application.
- (8) A regulation is, if it so provides, effective with reference Retroactive to a period before it is filed.
- 18. This Act comes into force on a day to be named by Commenceproclamation of the Lieutenant Governor.
- 19. The short title of this Act is the Ontario Drug Benefit Short title Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

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Bill 54

(Chapter 27 Statutes of Ontario, 1986)

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

The Hon. M. Elston

Minister of Health



1st Reading April 22nd, 1986

2nd Reading April 22nd, 1986

3rd Reading July 10th, 1986

Royal Assent July 10th, 1986



Bill 54 1986

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

"designated" means designated by the regulations;

"drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,

"inspector" means a person appointed under section 14;

"listed drug product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as a listed drug product;

"listed substance" means a substance, other than a drug, designated as a listed substance;

"Minister" means the Minister of Health;

"operator of a pharmacy" means,

- (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or
- (b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the *Public* R.S.O. 1980, *Hospitals Act*;

"physician" means a person licensed to engage in the practice of medicine under Part III of the *Health Disciplines Act*;

"prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

"regulations" means the regulations made under this Act.

Eligible persons

2.—(1) A person who is a member of a designated class of persons is an eligible person.

Persons deemed eligible persons R.S.O. 1980, c. 151

(2) This Act applies to persons entitled to receive drug benefits under the *Family Benefits Act* and the regulations under it as if those persons were eligible persons.

Application of this Act

3. This Act applies in respect of the supplying of listed drug products for eligible persons unless that supplying is an insured service as defined in the *Health Insurance Act*.

R.S.O. 1980, c. 197

Billing prohibited

4.—(1) No operator of a pharmacy shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations.

Idem

(2) No physician shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug product for an eligible person, unless the charge or payment is authorized by the regulations.

Exception

(3) Subsections (1) and (2) do not apply to an operator of a pharmacy or a physician who supplies a listed drug product for an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Payment of claim of operator

5.—(1) An operator of a pharmacy who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person pursuant to a prescription is entitled to be paid by the Minister the amount provided for under section 6.

Agreement re price

(2) The Minister may pay an operator of a pharmacy an amount different from the amount provided for under section 6 in respect of a claim under subsection (1) if the Minister has a written agreement to that effect with the operator.

Payment of claim of physician (3) A physician who submits to the Minister a claim for payment in respect of supplying a listed drug product for an eligible person is entitled to be paid by the Minister the amount provided for by the regulations.

(4) The person submitting a claim under subsection (1) or Information (3) shall include in it the information prescribed by the regulations

(5) Eligible persons shall be deemed to have authorized persons submitting claims under subsection (1) or (3) to include in the claims the information mentioned in subsection (4).

Deemed authorization

6.—(1) The amount the Minister shall pay under subsection. tion 5 (1) in respect of a listed drug product is the sum of the to pay dispensing fee referred to in subsection (2) and the amount provided for by the regulations.

(2) The dispensing fee the Minister shall pay to operators of Dispensing pharmacies under subsection (1) for dispensing listed drug products for eligible persons shall be,

(a) where the pharmacy is operated in a hospital approved as a public hospital under the Public R.S.O. 1980, Hospitals Act, the amount prescribed by the regulations:

- (b) where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies, no dispensing fee; and
- (c) in all other cases, the lesser of,
 - (i) the amount determined under section 7, or
 - (ii) the amount the operator charges under subsection 6 (1) of the Prescription Drug Cost 1986, c. 28 Regulation Act, 1986 (usual and customary dispensing fee).

(3) Despite subsection (1), where the Minister is satisfied Exception that an operator of a pharmacy was not reasonably able to purchase any listed drug product of a drug at a price less than or equal to the amount provided for by the regulations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the cost to the operator of purchasing the least expensive listed drug product of the drug that is in the operator's inventory.

(4) Despite subsection (1), where a prescription includes a Idem direction that there be no substitutions and the Minister is satisfied that the operator of the pharmacy was not reasonably able to purchase the listed drug product prescribed at a price less than or equal to the amount provided for by the regu-

1986, c. 28

lations for the purpose of subsection (1), the amount that the Minister shall pay under subsection 5 (1) is the sum of the dispensing fee referred to in subsection (2) and the price designated under subsection 7 (1) of the *Prescription Drug Cost Regulation Act*, 1986 as the best available price for that product.

Idem

(5) For the purpose of subsection (3), the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations.

Definition

7.—(1) In this section, "Association" means the Ontario Pharmacists Association.

Determination of dispensing fee (2) The Minister and the Association may by agreement, with or without referring the matter to a fee negotiating committee, determine the dispensing fee the Minister shall pay to operators of pharmacies under subsection 6 (2).

Idem

(3) An agreement made under subsection (2) may establish classes of operators of pharmacies and provide for an amount payable in respect of each class.

Fee negotiating committee

- (4) There may be established from time to time as provided under subsection (6) a fee negotiating committee to be composed of,
 - (a) three voting members appointed by the Minister;
 - (b) three voting members appointed by the Association; and
 - (c) a chairman, who shall not have a vote, to be appointed jointly by the Minister and the Association.

Remuneration of chairman (5) The remuneration and expenses of the chairman shall be paid for by the Ministry of Health.

Mandatory negotiation (6) The Minister or the Association may, by notice in writing to the other, require that negotiation of the dispensing fee be conducted by a fee negotiating committee.

Appointment of committee

(7) Not later than seven days after the notice has been received, the Minister and the Association shall each appoint three persons to serve as members of the fee negotiating committee and shall jointly appoint a chairman of the committee.

Negotiation

(8) The committee shall begin its negotiations as soon as reasonably possible on a date to be named by the chairman.

(9) If, after both sides on the committee have negotiated in Negotiations good faith, the Minister or the Association believes that the committee's negotiations have reached an impasse, that person, by written notice to the chairman and the other person, may request that the chairman recommend a dispensing fee to the committee.

at impasse

(10) The chairman may obtain and use any relevant infor- Chairman's mation that the chairman believes may be useful in formulating the recommendation.

(11) The chairman shall recommend a dispensing fee to the committee within thirty days after being requested to do so and shall provide the committee with the information upon which the recommendation was based.

(12) The committee shall resume its negotiations within seven days after receiving the chairman's recommendation.

Negotiations resume

(13) At any time after the committee resumes its negotia- Recommentions under subsection (12), the Minister or the Association public may make public the recommendation and the information upon which it was based, after first giving the other person twenty-four hours written notice of the intention to do so.

dations made

(14) If, after both sides on the committee have resumed negotiations in good faith, the Minister or the Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations.

Terminate negotiations

(15) If, at any time in the negotiating process, a majority of Committee the committee, including at least two persons appointed by the Minister and at least two persons appointed by the Association, agree on the appropriate dispensing fee, the chairman on behalf of the committee shall submit that dispensing fee to the Minister and to the Association as the committee's proposed dispensing fee.

(16) The Minister and the Association shall in writing notify Notice of each other of their acceptance or rejection of the committee's proposed dispensing fee within fourteen days after receiving it.

(17) If the Minister or the Association rejects the commit-Rejection of tee's proposed dispensing fee, the committee shall resume its dispensing negotiations within seven days thereafter and this section fee applies as if the committee had not proposed a dispensing fee.

Dispensing fee

- (18) The dispensing fee for the purpose of subsection 6 (2) shall be,
 - (a) if the Minister and the Association both accept the committee's proposed dispensing fee, the dispensing fee proposed;
 - (b) if the Minister and the Association otherwise agree to a dispensing fee, the dispensing fee agreed upon; or
 - (c) in all other cases, the dispensing fee provided for by the regulations.

Agreement

(19) The Minister and the Association may enter into a written agreement respecting any aspect of the negotiation of the dispensing fee, and in the event of a conflict between a provision of the agreement and a provision of this section, the agreement prevails.

Unlisted drugs, special case **8.**—(1) If a physician informs the Minister that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there is not a listed drug product, the Minister may make this Act apply in respect of the supplying of that drug as if it were a listed drug product by so notifying the physician.

Notice to operator

(2) An operator of a pharmacy is not liable for contravening this Act or the regulations in respect of supplying a drug referred to in subsection (1) unless the operator has received notice from the physician or from the Minister that this Act applies to that supplying.

Agreement re listed substance

9.—(1) The Minister may make an agreement with a supplier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician.

Supplier not to charge (2) Except as the agreement authorizes, the supplier shall not charge, or accept payment from, any person other than the Minister for supplying the listed substance to an eligible person under the direction of a physician.

Exception

(3) Subsection (2) does not apply to a supplier of a listed substance who supplies the listed substance to an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person.

Refusal to dispense prohibited 10. No operator of a pharmacy shall refuse to supply a listed drug product for an eligible person in order to avoid the

operation of a provision of this Act but an operator may refuse to supply a listed drug product for an eligible person if the proper exercise of professional judgment so requires.

- 11.—(1) An operator of a pharmacy may notify the Minis- Opting out ter that the operator elects not to accept payment from the Minister under section 5.
- (2) Beginning ninety days after the day the Minister Idem receives the notice under subsection (1), the operator is not entitled to payment from the Minister under section 5 and is not required to supply listed drug products for eligible persons under section 10.

12. The Minister may consult with persons or organiza- Minister to tions representing eligible persons, manufacturers of listed drug products, operators of pharmacies, physicians and suppliers of listed substances with respect to the amounts payable by the Minister and other matters of mutual concern arising out of this Act and the regulations.

13.—(1) No person who administers this Act or the regu-Confidenlations shall disclose any information about an eligible person or about the supplying of listed drug products to an eligible person.

- (2) Subsection (1) does not apply to the disclosure of Exception information.
 - (a) to the person's counsel;
 - (b) with the consent of the eligible person;
 - (c) in connection with the administration of this Act, the Prescription Drug Cost Regulation Act, 1986, 1986, c. 28 the Health Disciplines Act, the Health Insurance R.S.O. 1980, Act, the Ministry of Health Act, any other Act cc. 196, 197, 280, 93, 400 administered by the Minister of Health, the Coroners Act, the Provincial Offences Act or the Criminal Code (Canada), or any regulations made R.S.C. 1970, thereunder: or

- (d) if the communication does not disclose the identity of a drug that was prescribed or supplied for an identified eligible person.
- **14.**—(1) The Minister may appoint inspectors for the pur- Inspectors poses of this section.

Examine

(2) An inspector may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of the operator or physician or of information they are required to submit under this Act or the regulations, or in determining whether they have complied with this Act and the regulations.

Idem

(3) An inspector may examine records, in whatever form, in the possession or under the control of a wholesaler or manufacturer, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of an operator of a pharmacy or physician or in determining whether the wholesaler or manufacturer have complied with this Act and the regulations.

Copies

(4) In carrying out an inspection under subsection (2), the inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Idem

(5) In carrying out an inspection under subsection (3), the inspector may, upon giving a receipt therefor, take away a sales record or a marketing record or both for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

Entry

(6) An inspector may at any reasonable time, on producing proper identification, enter business premises where the inspector believes a record referred to in subsection (2) or (3) may be located for the purpose of an inspection.

Offence

- 15.—(1) A person who,
 - (a) contravenes section 4 (charges a person other than the Minister);
 - (b) contravenes subsection 9 (2) (supplier charges contrary to agreement);
 - (c) contravenes section 10 (refuses to dispense);
 - (d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this Act or the regulations; or

(e) obstructs a person carrying out an inspection under section 14.

and any director or officer of a corporation who authorizes or permits such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$5,000 for a first offence and \$10.000 for a second and subsequent offence.

- (2) The maximum penalty that may be imposed upon a cor- Idem poration is \$50,000 and not as provided in subsection (1).
- 16.—(1) A manufacturer of a drug product that is desig- Conditions nated or being considered for designation as a listed drug product shall.
 - supply that drug product for the same price to all (a) purchasers in Ontario, other than public hospitals purchasing solely for use in the treatment of patients and out-patients in the hospital, where the purchasers purchase the same quantity of individual units of the drug product in the same dosage form and strength; and
 - (b) give to the Minister, on request, the information prescribed by the regulations concerning the production and sale of the drug product.
- (2) Where a manufacturer of a drug product contravenes Idem this section or obstructs a person carrying out an inspection under section 14, the Lieutenant Governor in Council may refuse to designate the drug product as a listed drug product, or, where it is already so designated, may remove that designation.

17.—(1) This Act applies with necessary modifications in Pharmarespect of designated pharmaceutical products and, for the products purpose, a designated pharmaceutical product shall be deemed to be a listed drug product.

- (2) Section 16 and subsections 18 (2) to (5) do not apply for Application of s. 16 and the purpose of subsection (1).
 - subss. 18 (2-5)
- 18.—(1) The Lieutenant Governor in Council may make Regulations regulations,
 - (a) designating eligible classes of persons for the purposes of section 2;

- (b) prescribing conditions to be met by products or by manufacturers of products in order for the products to be eligible for designation as listed drug products:
- (c) designating a product as a listed drug product where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be so designated if it or its manufacturer has not met the conditions described in clause (b);
- (d) designating substances other than drugs that are listed substances;
- (e) authorizing the charges that are permitted under section 4;
- (f) prescribing the information to be included in a claim under subsection 5 (4);
- (g) respecting the amounts payable by the Minister under section 5;
- (h) requiring operators of pharmacies and manufacturers and wholesalers of listed drug products to file reports to the Minister concerning the cost to operators of pharmacies and wholesalers of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made;
- (i) requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;
- (j) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product for the purpose of subsection 6 (3);
- (k) designating listed drug products that do not require a prescription for sale for the purpose of clause 6 (2) (b);
- (l) designating pharmaceutical products for the purpose of section 17;

- (m) respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.
- (2) In determining the amounts payable by the Minister Idem under subsections 5 (1) and (2), the Lieutenant Governor in Council shall prescribe from time to time the best available price of the drug.
 - (a) as determined by the Minister from such sampling as the Minister considers appropriate; or
 - (b) as estimated by the Minister, if the Minister considers the information reasonably available to the Minister is insufficient for the purpose of ascertaining the best available price,

and prescribe a percentage of the best available price, not less than 10 per cent nor greater than 20 per cent, to be added to it.

- (3) In determining the best available price for a drug, no Idem account shall be taken of a purchase of the drug for use solely in the treatment of hospital patients and out-patients.
- (4) In this section, "best available price" for a drug in a Best particular dosage form and strength, means the lowest amount, calculated per gram, milliliter, tablet, capsule or other appropriate unit, for which a listed drug product of that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario and in calculating that amount, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

- (5) Subsection (2) does not apply in respect of listed drug Exception products designated by the regulations for the purpose of clause 6 (2) (b).
- (6) A regulation made under this section may be general or Regulations particular in its application.
- (7) A regulation is, if it so provides, effective with reference Retroactive to a period before it is filed.

Commencement

19. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

20. The short title of this Act is the Ontario Drug Benefit Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill55

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

The Hon. M. Elston

Minister of Health



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

This Act is based on an amended version of section 155 of the Health Disciplines Act.

The Lieutenant Governor in Council is authorized to designate prescription drug products as interchangeable with one another for the purposes of this Act. If a particular interchangeable product is named in a prescription and the prescription does not say "no substitutions", the pharmacist is allowed, and on the customer's request required, to dispense an interchangeable product. The pharmacist cannot dispense the named drug without informing the customer of the right to request an interchangeable product. If a prescription names a generic drug for which there are interchangeable products, the pharmacist is required to dispense an interchangeable product. Pharmacists are required to set, post and inform customers of their maximum dispensing fee for interchangeable products. The Executive Council is authorized to make regulations concerning the amounts to be charged for selling interchangeable products. Pharmacists and physicians are protected from liability for dispensing interchangeable products under this Act.

For all prescription drugs, pharmacists are required to dispense the entire quantity prescribed unless the customer consents to or the regulations authorize a lesser quantity.

The Lieutenant Governor in Council can assign enforcement of this Act to one of its members or to the Ontario College of Pharmacists. The person assigned to enforce the Act is authorized to inspect records of pharmacists to ensure compliance with the Act.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.

Bill 55 1986

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"designated" means designated by the regulations;

"drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,

"inspector" means a person appointed under section 10 of this Act;

"interchangeable product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products;

"operator of a pharmacy" means,

- (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or
- (b) the operator of a pharmacy operated in a hospital approved as a public hospital under the *Public Hos-* R.S.O. 1980, pitals Act;

"prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

[&]quot;regulations" means the regulations made under this Act.

1986

Substitution where named product

Bill 55

2.—(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it.

Request for interchangeable product

(2) If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it.

Inform customer

(3) If a person presents a prescription that directs the dispensing of a specific interchangeable product, the dispenser shall not dispense that product without informing the person, in the manner prescribed by the regulations, of the right to request an interchangeable product.

Exception

(4) Subsections (1), (2) and (3) do not apply if the person issuing the prescription directs in the prescription that there shall be no substitutions.

Dispensing generic drug

3. If a prescription directs the dispensing of a drug for which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug.

Maximum dispensing fee

4.—(1) Every operator of a pharmacy shall set a single maximum dispensing fee to be charged in respect of dispensing interchangeable products and shall file a statement with the Registrar of the Ontario College of Pharmacists setting out that fee.

Notify customers

(2) Every operator of a pharmacy shall post in the pharmacy, in the manner prescribed by the regulations, a notice containing the fee set under subsection (1) and any other information prescribed by the regulations respecting the charge for interchangeable products.

Maximum charge for supplying interchangeable products

5. No person shall charge more than the maximum amount provided for by the regulations for supplying an interchangeable product pursuant to a prescription.

No liability for dispensing interchangeproducts

6. If an interchangeable product is dispensed in accordance with this Act, no action or other proceeding lies or shall be instituted against the person who issued the prescription or the dispenser on the grounds that an interchangeable product other than the one prescribed was dispensed.

Dispense entire quantity

7.—(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time unless before the drug is dispensed the person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities.

(2) Despite subsection (1), the regulations may authorize Exception dispensing a drug in less than the entire quantity prescribed under specified conditions.

3

8. Every person who dispenses a drug pursuant to a pre- Inform scription shall provide with the drug, in the manner prescribed customer of cost of drugs by the regulations, particulars of the amount charged.

9. The Lieutenant Governor in Council may by regulation Enforcement assign to a member of the Executive Council or to the Ontario College of Pharmacists the authority for enforcing this Act.

10.—(1) The person assigned the responsibility for enforc- Inspectors ing this Act may appoint inspectors for the purposes of this Act.

(2) An inspector or any person acting under the inspector's Examine instructions may inspect any pharmacy and examine any records in whatever form in the possession or under the control of the operator of the pharmacy if those records are relevant to determine whether this Act is being complied with.

(3) A person carrying out an inspection may, upon giving a Copies receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made with reasonable dispatch and the record shall be promptly thereafter returned.

(4) An inspector or a person acting under the inspector's Entry instructions may at any reasonable time on producing proper identification enter any business premises where the inspector or person believes a record referred to in subsection (2) may be located for the purpose of an inspection.

11.—(1) Any person who,

Offence

- (a) contravenes subsection 2 (2) (dispense product requested):
- (b) contravenes subsection 2 (3) (inform customer of interchangeable product);
- (c) contravenes section 3 (dispense interchangeable when generic prescribed);
- (d) contravenes section 4 (maximum dispensing fee set and posted);

- (e) contravenes section 5 (maximum allowable charge);
- (f) contravenes section 7 (dispense entire quantity);
- (g) contravenes section 8 (inform person of cost); or
- (h) obstructs any person carrying out an inspection under section 10,

and any director, officer, employee or agent of a corporation who authorizes, permits or concurs in such a contravention by a corporation is guilty of an offence under this Act and liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

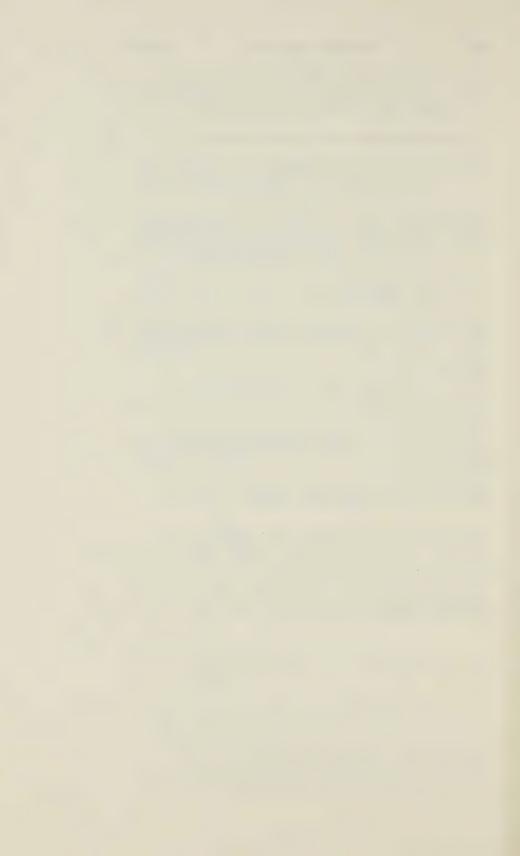
Regulations

- **12.**—(1) The Lieutenant Governor in Council may make regulations,
 - (a) designating products as interchangeable with other products for the purposes of this Act;
 - (b) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 2 (3));
 - (c) prescribing the information to be included in a notice (subsection 4 (2)) and the manner of posting a notice:
 - (d) providing for the maximum amounts chargeable for interchangeable drugs (section 5);
 - (e) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 7 (2));
 - (f) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 8);
 - (g) assigning the responsibility for enforcing this Act;
 - (h) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;

- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) A regulation made under clause (1) (d) may,

Idem

- (a) prescribe a specified amount or one or more methods for determining the maximum amount payable for each interchangeable product;
- (b) prescribe a specified amount or method for determining a fee or allowance to be charged in respect of each interchangeable product sold; and
- (c) limit the frequency with which a fee or allowance may be charged.
- (3) A regulation made under clause (1) (d) may establish Idem different classes of operators of pharmacies and provide for a different amount payable under subsection (1) in respect of each class.
- (4) A regulation made under this section may be general or Idem particular in its application.
- 13.—(1) Clauses 113 (1) (e) and (i) of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.
 - (2) Section 155 of the said Act is repealed.
 - (3) Clause 158 (2) (b) of the said Act is repealed.
- **14.** This Act comes into force on a day to be named by Commence-proclamation of the Lieutenant Governor.
- **15.** The short title of this Act is the *Prescription Drug Cost* Short title *Regulation Act*, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill55



An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

The Hon. M. Elston

Minister of Health

1st Reading

April 22nd, 1986

2nd Reading

April 22nd, 1986

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House) (2nd Reprint—Correction of printing error—s. 7 (2, 3))

EXPLANATORY NOTES

This Act is based on an amended version of section 155 of the Health Disciplines Act.

The Lieutenant Governor in Council is authorized to designate prescription drug products as interchangeable with one another for the purposes of this Act. The Lieutenant Governor in Council may prescribe conditions to be met by products of their manufacturers to be designated as interchangeable and is not to designate a product as interchangeable if those conditions are not met or if it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the products to be interchangeable with it.

If a particular interchangeable product is named in a prescription and the prescription does not say "no substitutions", the pharmacist is allowed, and on the customer's request required, to dispense an interchangeable product. The pharmacist cannot dispense the named drug without informing the customer of the right to request an interchangeable product. If a prescription names a generic drug for which there are interchangeable products, the pharmacist is required to dispense an interchangeable product. Pharmacists are required to set, post and inform customers of their usual and customary dispensing fee for interchangeable products. Pharmacists and physicians are protected from liability for dispensing interchangeable products under this Act.

The Bill provides a maximum charge for supplying any drug product pursuant to a prescription equal to the sum of a base price described below, a prescribed percentage of that price and the person's usual and customary dispensing fee. The base price is provided to be the best available price of the product dispensed where the product is not interchangeable, where there are to be no substitutions or where the customer has requested a particular product. In all other cases the base price is the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

For all prescription drugs, other than those excepted by the regulations, pharmacists are required to dispense the entire quantity prescribed unless the customer consents to or the regulations authorize a lesser quantity.

The Ontario College of Pharmacists is assigned responsibility for enforcing the Act in respect of operators of pharmacies and dispensers in pharmacies. The College is authorized to inspect records of pharmacists to ensure compliance with the Act.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.

Bill 55 1986

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

- "designated" means designated by the regulations;
- "dispenser" means a person who dispenses a drug pursuant to a prescription;
- "drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,

- "inspector" means a person appointed under section 12 of this Act:
- "interchangeable product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products;
- "operator of a pharmacy" means the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*;
- "prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;
- "Registrar" means the Registrar of the Ontario College of Pharmacists;
- "regulations" means the regulations made under this Act.

Application of this Act

R.S.O. 1980, c. 410 **2.** This Act does not apply to the dispensing of a drug in or by a hospital approved as a public hospital under the *Public Hospitals Act* if the drug is dispensed for a patient or an out-patient of the hospital.

Over the counter drugs excepted

3. Subsections 4 (2) and (3) and sections 5, 6, 7, 9 and 10 do not apply in respect of an interchangeable product that does not require a prescription for sale.

Substitution where named product

4.—(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it.

Request for interchangeable product (2) If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person for whom the product was prescribed or the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it.

Inform

(3) If a prescription directs the dispensing of a specific interchangeable product, the dispenser shall not supply that product without informing the person for whom the product was prescribed or the person presenting the prescription, in the manner prescribed by the regulations, of the right to request an interchangeable product.

Exceptions

- (4) Subsection (3) does not apply if,
 - (a) the amount to be charged for supplying the product specified in the prescription is not more than the least amount that would have been charged for supplying a product that is interchangeable with it and available in the dispenser's inventory;

1986, c. 27

- (b) a claim for payment will be submitted to the Minister of Health under section 5 of the *Ontario Drug Benefit Act*, 1986 in respect of the supplying of the product; or
- (c) the product is being supplied pursuant to a repeat of the prescription.

Selection of interchangeable product (5) If a prescription directs the dispensing of a product that is not designated as an interchangeable product and there is an interchangeable product that contains a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the product prescribed, the dispenser may dispense the interchangeable product.

- (6) Subsections (1), (2), (3) and (5) do not apply to a pre-Exception scription that includes,
 - (a) in the case of a written prescription, the handwritten words "no sub" or "no substitution"; or
 - (b) in any other case, a direction recorded by the dispenser that there be no substitution.
- 5. If a prescription directs the dispensing of a drug for Dispensing which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug.

6.—(1) Every operator of a pharmacy shall set a single Maximum specific amount as a usual and customary dispensing fee in fee respect of dispensing interchangeable products and shall file a statement with the Registrar setting out that fee.

(2) An operator of a pharmacy may change the usual and customary dispensing fee by filing a statement with the Registrar setting out the new fee.

Change

(3) The usual and customary dispensing fee becomes effective on the day the statement is received by the Registrar.

Effective date of fee

(4) Every operator of a pharmacy shall post in the pharma- Notify cy, in the manner prescribed by the regulations, a notice containing the usual and customary dispensing fee filed with the Registrar and any other information prescribed by the regulations respecting the charge for interchangeable products.

customers

7.—(1) In this section, "best available price", in respect of Best a particular manufacturer's drug product in a particular dosage form and strength for which a prescription is dispensed, means the lowest price, calculated per gram, milliliter, capsule, tablet or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario.

- (a) as determined by the Minister from such sampling as the Minister considers appropriate; or
- as estimated by the Minister, if the Minister considers the information reasonably available to the Minister is insufficient for the purpose of ascertaining the best available price,

which price shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

Determining base price

(2) The base price for supplying a drug product pursuant to a prescription shall be,

1986, c. 27

- (a) where the drug product is not an interchangeable product and the product is a listed drug product as defined in the *Ontario Drug Benefit Act*, 1986, the best available price of that product;
- (b) where the person issuing the prescription has specified that there shall be no substitutions, the best available price of the product prescribed;
- (c) where the person presenting the prescription has requested the dispensing of a particular interchangeable product, the best available price of that product; and
- (d) in all other cases, the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

Maximum charge for supplying drug products

- (3) No person shall charge more for supplying a drug product pursuant to a prescription than the sum of,
 - (a) the base price determined under subsection (2);
 - (b) the percentage of that price, not less than 10 per cent and not greater than 20 per cent, that is prescribed by the regulations; and
 - (c) that person's usual and customary dispensing fee unless a greater amount is provided for in the regulations.

No liability for dispensing interchangeable products **8.** If an interchangeable product is dispensed in accordance with this Act, no action or other proceeding lies or shall be instituted against the person who issued the prescription, the dispenser or any person who is responsible in law for the acts of either of them on the grounds that an interchangeable product other than the one prescribed was dispensed.

Dispense entire quantity

9.—(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time unless before the drug is dispensed the

person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities.

(2) Despite subsection (1), the regulations may authorize Exception dispensing a drug in less than the entire quantity prescribed under specified conditions.

- (3) The regulations may designate specific drugs that are to Idem be exempt from the application of subsection (1).
- **10.** Every person who dispenses a drug pursuant to a pre- Inform scription shall provide with the drug, in the manner prescribed customer of cost of drugs by the regulations, particulars of the amount charged.

- 11. The Ontario College of Pharmacists is responsible for Enforcement the enforcement of this Act in respect of operators of pharmacies and dispensers in pharmacies.
- **12.**—(1) The Ontario College of Pharmacists may appoint Inspectors inspectors for the purpose of enforcing this Act.
- (2) An inspector may examine any records, in whatever Examine form, in the possession or under the control of an operator of a pharmacy if the inspector believes on reasonable grounds that the records will assist the inspector in determining whether this Act and the regulations have been complied with.

- (3) An inspector may, upon giving a receipt for it, take Copies away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.
- (4) An inspector may at any reasonable time on producing Entry proper identification enter any business premises where the inspector believes a record referred to in subsection (2) may be located for the purpose of an inspection.
 - **13.**—(1) Any person who,

Offence

- (a) contravenes subsection 4 (2) (dispense product requested);
- (b) contravenes subsection 4 (3) (inform customer of interchangeable product);
- (c) contravenes section 5 (dispense interchangeable when generic prescribed);

- (d) contravenes section 6 (usual and customary dispensing fee set and posted);
- (e) contravenes section 7 (maximum allowable charge);
- (f) contravenes section 9 (dispense entire quantity);
- (g) contravenes section 10 (inform person of cost); or
- (h) obstructs any person carrying out an inspection under section 12,

and any director or officer of a corporation who authorizes or permits such a contravention by a corporation is guilty of an offence under this Act and liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

- **14.**—(1) The Lieutenant Governor in Council may make regulations,
 - (a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products;
 - (b) designating a product as interchangeable with one or more other products where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be designated as interchangeable with another product if,
 - (i) it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the other product, or
 - (ii) the product or its manufacturer has not met the conditions described in clause (a);
 - (c) providing for the maximum amounts chargeable for drug products (section 7);
 - (d) prescribing circumstances in which persons may charge more than their usual and customary dispensing fees.

- (2) Subject to the approval of the Lieutenant Governor in Idem Council and with prior review by the Minister, the Council of the Ontario College of Pharmacists may make regulations,
 - (a) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 4 (3));
 - (b) prescribing the information to be included in a notice (subsection 6 (4)) and the manner of posting a notice;
 - (c) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 9 (2));
 - (d) designating specific drugs that are to be exempt from the application of subsection 9 (1);
 - (e) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 10);
 - (f) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained.
- (3) Where the Minister requests in writing that the Council Idem of the Ontario College of Pharmacists make, amend or revoke a regulation under subsection (2) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.
- (4) A regulation made under subsection (1) or (2) may be Idem general or particular in its application.
- 15.—(1) Clauses 113 (1) (e) and (i) of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.
 - (2) Section 155 of the said Act is repealed.
 - (3) Clause 158 (2) (b) of the said Act is repealed.

Commencement **16.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the Prescription Drug Cost Regulation Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill 55

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

The Hon. M. Elston

Minister of Health

1st Reading

April 22nd, 1986

2nd Reading

April 22nd, 1986

3rd Reading

Royal Assent

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

This Act is based on an amended version of section 155 of the Health Disciplines Act.

The Lieutenant Governor in Council is authorized to designate prescription drug products as interchangeable with one another for the purposes of this Act. The Lieutenant Governor in Council may prescribe conditions to be met by products of their manufacturers to be designated as interchangeable and is not to designate a product as interchangeable if those conditions are not met or if it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the products to be interchangeable with it.

If a particular interchangeable product is named in a prescription and the prescription does not say "no substitutions", the pharmacist is allowed, and on the customer's request required, to dispense an interchangeable product. The pharmacist cannot dispense the named drug without informing the customer of the right to request an interchangeable product. If a prescription names a generic drug for which there are interchangeable products, the pharmacist is required to dispense an interchangeable product. Pharmacists are required to set, post and inform customers of their usual and customary dispensing fee for interchangeable products. Pharmacists and physicians are protected from liability for dispensing interchangeable products under this Act.

The Bill provides a maximum charge for supplying any drug product pursuant to a prescription equal to the sum of a base price described below, a prescribed percentage of that price and the person's usual and customary dispensing fee. The base price is provided to be the best available price of the product dispensed where the product is not interchangeable, where there are to be no substitutions or where the customer has requested a particular product. In all other cases the base price is the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

For all prescription drugs, other than those excepted by the regulations, pharmacists are required to dispense the entire quantity prescribed unless the customer consents to or the regulations authorize a lesser quantity.

The Ontario College of Pharmacists is assigned responsibility for enforcing the Act in respect of operators of pharmacies and dispensers in pharmacies. The College is authorized to inspect records of pharmacists to ensure compliance with the Act.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.

Bill 55 1986

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

- "designated" means designated by the regulations;
- "dispenser" means a person who dispenses a drug pursuant to a prescription;
- "drug" means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,

- "inspector" means a person appointed under section 12 of this Act;
- "interchangeable product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products;
- "operator of a pharmacy" means the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*;
- "prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;
- "Registrar" means the Registrar of the Ontario College of Pharmacists;

[&]quot;regulations" means the regulations made under this Act.

Application of this Act

R.S.O. 1980, c. 410 2. This Act does not apply to the dispensing of a drug in or by a hospital approved as a public hospital under the *Public Hospitals Act* if the drug is dispensed for a patient or an out-patient of the hospital.

Over the counter drugs excepted

3. Subsections 4 (2) and (3) and sections 5, 6, 7, 9 and 10 do not apply in respect of an interchangeable product that does not require a prescription for sale.

Substitution where named product

4.—(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it.

Request for interchangeable product (2) If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person for whom the product was prescribed or the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it.

Inform

(3) If a prescription directs the dispensing of a specific interchangeable product, the dispenser shall not supply that product without informing the person for whom the product was prescribed or the person presenting the prescription, in the manner prescribed by the regulations, of the right to request an interchangeable product.

Exceptions

- (4) Subsection (3) does not apply if,
 - (a) the amount to be charged for supplying the product specified in the prescription is not more than the least amount that would have been charged for supplying a product that is interchangeable with it and available in the dispenser's inventory;

1986, c. ...

- (b) a claim for payment will be submitted to the Minister of Health under section 5 of the *Ontario Drug Benefit Act*, 1986 in respect of the supplying of the product; or
- (c) the product is being supplied pursuant to a repeat of the prescription.

Selection of interchangeable product (5) If a prescription directs the dispensing of a product that is not designated as an interchangeable product and there is an interchangeable product that contains a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the product prescribed, the dispenser may dispense the interchangeable product.

- (6) Subsections (1), (2), (3) and (5) do not apply to a pre-Exception scription that includes,
 - (a) in the case of a written prescription, the handwritten words "no sub" or "no substitution"; or
 - (b) in any other case, a direction recorded by the dispenser that there be no substitution.
- 5. If a prescription directs the dispensing of a drug for Dispensing which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug.

6.—(1) Every operator of a pharmacy shall set a single Maximum specific amount as a usual and customary dispensing fee in fee respect of dispensing interchangeable products and shall file a statement with the Registrar setting out that fee.

dispensing

(2) An operator of a pharmacy may change the usual and Change customary dispensing fee by filing a statement with the Registrar setting out the new fee.

(3) The usual and customary dispensing fee becomes effec- Effective tive on the day the statement is received by the Registrar.

date of fee

(4) Every operator of a pharmacy shall post in the pharmacy, in the manner prescribed by the regulations, a notice containing the usual and customary dispensing fee filed with the Registrar and any other information prescribed by the regulations respecting the charge for interchangeable products.

Notify

7.—(1) In this section, "best available price", in respect of Best a particular manufacturer's drug product in a particular dosage form and strength for which a prescription is dispensed, means the lowest price, calculated per gram, milliliter, capsule or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario, which price shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

(2) The base price for supplying a drug product pursuant to Determining a prescription shall be,

base price

(a) where the drug product is not an interchangeable product, the best available price of that product;

- (b) where the person issuing the prescription has specified that there shall be no substitutions, the best available price of the product prescribed;
- (c) where the person presenting the prescription has requested the dispensing of a particular interchangeable product, the best available price of that product; and
- (d) in all other cases, the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

Maximum charge for supplying drug products

- (3) No person shall charge more for supplying a drug product pursuant to a prescription than the sum of,
 - (a) the base price determined under subsection (2);
 - (b) the percentage of that price, not less than 10 per cent and not greater than 20 per cent, that is prescribed by the regulations; and
 - (c) that person's usual and customary dispensing fee.

No liability for dispensing interchangeable products **8.** If an interchangeable product is dispensed in accordance with this Act, no action or other proceeding lies or shall be instituted against the person who issued the prescription, the dispenser or any person who is responsible in law for the acts of either of them on the grounds that an interchangeable product other than the one prescribed was dispensed.

Dispense entire quantity **9.**—(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time unless before the drug is dispensed the person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities.

Exception

- (2) Despite subsection (1), the regulations may authorize dispensing a drug in less than the entire quantity prescribed under specified conditions.
- (3) The regulations may designate specific drugs that are to be exempt from the application of subsection (1).

Inform customer of cost of drugs

10. Every person who dispenses a drug pursuant to a prescription shall provide with the drug, in the manner prescribed by the regulations, particulars of the amount charged.

11. The Ontario College of Pharmacists is responsible for Enforcement the enforcement of this Act in respect of operators of pharmacies and dispensers in pharmacies.

- 12.—(1) The Ontario College of Pharmacists may appoint Inspectors inspectors for the purpose of enforcing this Act.
- (2) An inspector may examine any records, in whatever Examine form, in the possession or under the control of an operator of a pharmacy if the inspector believes on reasonable grounds that the records will assist the inspector in determining whether this Act and the regulations have been complied with.

(3) An inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.

(4) An inspector may at any reasonable time on producing | Entry proper identification enter any business premises where the inspector believes a record referred to in subsection (2) may be located for the purpose of an inspection.

13.—(1) Any person who,

Offence

- (a) contravenes subsection 4 (2) (dispense product requested);
- (b) contravenes subsection 4 (3) (inform customer of interchangeable product);
- (c) contravenes section 5 (dispense interchangeable when generic prescribed);
- (d) contravenes section 6 (usual and customary dispensing fee set and posted);
- (e) contravenes section 7 (maximum allowable charge);
- (f) contravenes section 9 (dispense entire quantity);
- (g) contravenes section 10 (inform person of cost); or
- (h) obstructs any person carrying out an inspection under section 12.

and any director or officer of a corporation who authorizes or permits such a contravention by a corporation is guilty of an offence under this Act and liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

- **14.**—(1) The Lieutenant Governor in Council may make regulations,
 - (a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products;
 - (b) designating a product as interchangeable with one or more other products where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be designated as interchangeable with another product if,
 - (i) it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the other product, or
 - (ii) the product or its manufacturer has not met the conditions described in clause (a);
 - (c) providing for the maximum amounts chargeable for drug products (section 7).

Idem

- (2) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council of the Ontario College of Pharmacists may make regulations,
 - (a) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 4 (3));
 - (b) prescribing the information to be included in a notice (subsection 6 (2)) and the manner of posting a notice;
 - (c) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 9 (2));
 - (d) designating specific drugs that are to be exempt from the application of subsection 9 (1);

- (e) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 10);
- (f) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained.
- (3) Where the Minister requests in writing that the Council Idem of the Ontario College of Pharmacists make, amend or revoke a regulation under subsection (2) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.
- (4) A regulation made under subsection (1) or (2) may be Idem general or particular in its application.
- <u>15.</u>—(1) Clauses 113 (1) (e) and (i) of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.
 - (2) Section 155 of the said Act is repealed.
 - (3) Clause 158 (2) (b) of the said Act is repealed.
- **16.** This Act comes into force on a day to be named by Commence-proclamation of the Lieutenant Governor.
- 17. The short title of this Act is the *Prescription Drug Cost* Short title *Regulation Act*, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill55

(Chapter 28 Statutes of Ontario, 1986)



An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

The Hon. M. Elston

Minister of Health

1st Reading April 22nd, 1986

2nd Reading April 22nd, 1986

3rd Reading July 10th, 1986

Royal Assent July 10th, 1986

(Reprint—Correction of printing error—s. 7 (2, 3))



Bill 55

1986

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

- "designated" means designated by the regulations;
- "dispenser" means a person who dispenses a drug pursuant to a prescription;
- "drug" means a drug as defined in clause 113 (1) (d) of the Health Disciplines Act;

R.S.O. 1980, c. 196

- "inspector" means a person appointed under section 12 of this Act:
- "interchangeable product" means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products;
- "operator of a pharmacy" means the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*;
- "prescription" means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;
- "Registrar" means the Registrar of the Ontario College of Pharmacists;
- "regulations" means the regulations made under this Act.

Application of this Act R.S.O. 1980,

2. This Act does not apply to the dispensing of a drug in or by a hospital approved as a public hospital under the Public Hospitals Act if the drug is dispensed for a patient or an out-patient of the hospital.

Over the counter drugs excepted

c. 410

3. Subsections 4 (2) and (3) and sections 5, 6, 7, 9 and 10 do not apply in respect of an interchangeable product that does not require a prescription for sale.

Substitution where named product

4.—(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it

Request for interchangeproduct

(2) If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person for whom the product was prescribed or the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it.

Inform customer

(3) If a prescription directs the dispensing of a specific interchangeable product, the dispenser shall not supply that product without informing the person for whom the product was prescribed or the person presenting the prescription, in the manner prescribed by the regulations, of the right to request an interchangeable product.

Exceptions

- (4) Subsection (3) does not apply if,
 - (a) the amount to be charged for supplying the product specified in the prescription is not more than the least amount that would have been charged for supplying a product that is interchangeable with it and available in the dispenser's inventory;

1986, c. 27

- (b) a claim for payment will be submitted to the Minister of Health under section 5 of the Ontario Drug Benefit Act, 1986 in respect of the supplying of the product; or
- (c) the product is being supplied pursuant to a repeat of the prescription.

Selection of interchangeable product

(5) If a prescription directs the dispensing of a product that is not designated as an interchangeable product and there is an interchangeable product that contains a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the product prescribed, the dispenser may dispense the interchangeable product.

- (6) Subsections (1), (2), (3) and (5) do not apply to a pre-Exception scription that includes.
 - (a) in the case of a written prescription, the handwritten words "no sub" or "no substitution"; or
 - (b) in any other case, a direction recorded by the dispenser that there be no substitution.
- 5. If a prescription directs the dispensing of a drug for Dispensing which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug.

6.—(1) Every operator of a pharmacy shall set a single Maximum specific amount as a usual and customary dispensing fee in dispensing fee in dispension fee respect of dispensing interchangeable products and shall file a statement with the Registrar setting out that fee.

dispensing

(2) An operator of a pharmacy may change the usual and Change customary dispensing fee by filing a statement with the Registrar setting out the new fee.

(3) The usual and customary dispensing fee becomes effective tive on the day the statement is received by the Registrar.

date of fee

(4) Every operator of a pharmacy shall post in the pharma- Notify cy, in the manner prescribed by the regulations, a notice containing the usual and customary dispensing fee filed with the Registrar and any other information prescribed by the regulations respecting the charge for interchangeable products.

customers

7.—(1) In this section, "best available price", in respect of Best a particular manufacturer's drug product in a particular dosage form and strength for which a prescription is dispensed, means the lowest price, calculated per gram, milliliter, capsule, tablet or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario.

- as determined by the Minister from such sampling as the Minister considers appropriate; or
- (b) as estimated by the Minister, if the Minister considers the information reasonably available to the Minister is insufficient for the purpose of ascertaining the best available price,

which price shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall

deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature.

Determining base price

(2) The base price for supplying a drug product pursuant to a prescription shall be,

1986, c. 27

- (a) where the drug product is not an interchangeable product and the product is a listed drug product as defined in the *Ontario Drug Benefit Act*, 1986, the best available price of that product;
- (b) where the person issuing the prescription has specified that there shall be no substitutions, the best available price of the product prescribed;
- (c) where the person presenting the prescription has requested the dispensing of a particular interchangeable product, the best available price of that product; and
- (d) in all other cases, the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

Maximum charge for supplying drug products

- (3) No person shall charge more for supplying a drug product pursuant to a prescription than the sum of,
 - (a) the base price determined under subsection (2);
 - (b) the percentage of that price, not less than 10 per cent and not greater than 20 per cent, that is prescribed by the regulations; and
 - (c) that person's usual and customary dispensing fee unless a greater amount is provided for in the regulations.

No liability for dispensing interchangeable products **8.** If an interchangeable product is dispensed in accordance with this Act, no action or other proceeding lies or shall be instituted against the person who issued the prescription, the dispenser or any person who is responsible in law for the acts of either of them on the grounds that an interchangeable product other than the one prescribed was dispensed.

Dispense entire quantity **9.**—(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time unless before the drug is dispensed the

person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities.

- (2) Despite subsection (1), the regulations may authorize Exception dispensing a drug in less than the entire quantity prescribed under specified conditions.
- (3) The regulations may designate specific drugs that are to Idem be exempt from the application of subsection (1).
- 10. Every person who dispenses a drug pursuant to a pre- Inform scription shall provide with the drug, in the manner prescribed customer of cost of drugs by the regulations, particulars of the amount charged.
- 11. The Ontario College of Pharmacists is responsible for Enforcement the enforcement of this Act in respect of operators of pharmacies and dispensers in pharmacies.
- 12.—(1) The Ontario College of Pharmacists may appoint Inspectors inspectors for the purpose of enforcing this Act.
- (2) An inspector may examine any records, in whatever Examine form, in the possession or under the control of an operator of a pharmacy if the inspector believes on reasonable grounds that the records will assist the inspector in determining whether this Act and the regulations have been complied with

- (3) An inspector may, upon giving a receipt for it, take Copies away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible.
- (4) An inspector may at any reasonable time on producing Entry proper identification enter any business premises where the inspector believes a record referred to in subsection (2) may be located for the purpose of an inspection.
 - **13.**—(1) Any person who,

Offence

- (a) contravenes subsection 4 (2) (dispense product requested);
- (b) contravenes subsection 4 (3) (inform customer of interchangeable product);
- (c) contravenes section 5 (dispense interchangeable when generic prescribed):

- (d) contravenes section 6 (usual and customary dispensing fee set and posted);
- (e) contravenes section 7 (maximum allowable charge);
- (f) contravenes section 9 (dispense entire quantity);
- (g) contravenes section 10 (inform person of cost); or
- (h) obstructs any person carrying out an inspection under section 12,

and any director or officer of a corporation who authorizes or permits such a contravention by a corporation is guilty of an offence under this Act and liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

- **14.**—(1) The Lieutenant Governor in Council may make regulations,
 - (a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products;
 - (b) designating a product as interchangeable with one or more other products where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be designated as interchangeable with another product if,
 - (i) it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the other product, or
 - (ii) the product or its manufacturer has not met the conditions described in clause (a);
 - (c) providing for the maximum amounts chargeable for drug products (section 7);
 - (d) prescribing circumstances in which persons may charge more than their usual and customary dispensing fees.

- (2) Subject to the approval of the Lieutenant Governor in Idem Council and with prior review by the Minister, the Council of the Ontario College of Pharmacists may make regulations,
 - (a) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 4 (3));
 - (b) prescribing the information to be included in a notice (subsection 6 (4)) and the manner of posting a notice;
 - (c) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 9 (2));
 - (d) designating specific drugs that are to be exempt from the application of subsection 9 (1);
 - (e) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 10);
 - (f) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained
- (3) Where the Minister requests in writing that the Council Idem of the Ontario College of Pharmacists make, amend or revoke a regulation under subsection (2) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.
- (4) A regulation made under subsection (1) or (2) may be Idem general or particular in its application.
- 15.—(1) Clauses 113 (1) (e) and (i) of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.
 - (2) Section 155 of the said Act is repealed.
 - (3) Clause 158 (2) (b) of the said Act is repealed.

Commencement **16.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the Prescription Drug Cost Regulation Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

120N

Bill 56

An Act to provide for the Observance of Remembrance Day

Mr. Foulds



1st Reading
2nd Reading
3rd Reading

Royal Assent

April 22nd, 1986

EXPLANATORY NOTE

The Bill is intended to ensure that Remembrance Day is observed as a general holiday on November 11th.

Bill 56 1986

An Act to provide for the Observance of Remembrance Day

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Remembrance Day, being the 11th day of November in Holiday each year, is a public holiday for the purposes of Part VII of the *Employment Standards Act* and is a school holiday for the purposes of the *Education Act*.

R.S.O. 1980, cc. 137, 129

- **2.** This Act comes into force on the day it receives Royal Commence-Assent.
- **3.** The short title of this Act is the *Remembrance Day Act*, Short title 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 57

An Act to amend the Upholstered and Stuffed Articles Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading

June 5th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to update the definition of Director, the reference to the Consumer Protection Division being no longer appropriate. The Registrar of Upholstered and Stuffed Articles is replaced by the Director of the Upholstered and Stuffed Articles Branch. The maximum penalties are being increased.

Bill 57 1986

An Act to amend the **Upholstered and Stuffed Articles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause 1 (1) (b) of the Upholstered and Stuffed Articles Act, being chapter 517 of the Revised Statutes of Ontario. 1980, is repealed and the following substituted therefor:
 - (b) "Director" means the Director of the Upholstered and Stuffed Articles Branch.
 - (2) Clause 1 (1) (j) of the said Act is repealed.
- 2. Section 3 of the said Act is repealed and the following substituted therefor:
- 3. There shall be a Director of the Upholstered and Director Stuffed Articles Branch who shall be appointed by the Lieutenant Governor in Council to exercise the powers and perform the duties conferred or imposed on the Director under this Act.

- 3.—(1) Subsection 26 (1) of the said Act is amended by striking out "\$500" in the tenth line and inserting in lieu thereof "\$2,000" and by striking out "\$2,000" in the eleventh line and inserting in lieu thereof "\$10,000".
- (2) Subsection 26 (2) of the said Act is amended by striking out "\$500" in the fourth line and inserting in lieu thereof "\$2,000".
- 4. Section 27 of the said Act is amended by striking out "\$250" in the fifth line and inserting in lieu thereof "\$1,000".
- 5. The said Act and the regulations thereunder are amended by striking out "Registrar" wherever it occurs and inserting in lieu thereof in each instance "Director".

Commencement 6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the Upholstered and Stuffed Articles Amendment Act, 1986.

DN

35 ELIZABETH II, 1986

Bill58

An Act to amend the Time Act

Mr. McClellan

1st Reading April 22nd, 1986 2nd Reading April 22nd, 1986 3rd Reading

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The Bill would extend daylight saving time from the first Sunday in April to the <u>last Sunday in October</u>, subject to variation by regulation, thus providing for <u>nearly seven months of daylight saving time per year in Ontario.</u>

Daylight saving time is not now subject to provincial or federal legislation. It is now applied by municipal ordinance from the last Sunday in April, i.e., about 8 weeks before the summer equinox on June 21, to the last Sunday in October, i.e., approximately four months after June 21. The Bill would extend this to a period from about three months before to about four months after the summer equinox.

Bill 58

1986

An Act to amend the Time Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 1 of the Time Act, being chapter 501 of the Revised Statutes of Ontario, 1980, is amended by striking out "time reckoned as standard time" in the seventh and eighth lines and inserting in lieu thereof "the time in effect as provided by this Act".
- 2. Subsection 2 (3) of the said Act is repealed and the following substituted therefor:
- (3) Daylight saving time shall be reckoned as one hour Daylight saving time ahead of standard time.
 - (4) The time in effect shall be,

Time in effect

- daylight saving time during the period between 2 a.m. standard time on the first Sunday in April and 2 a.m. daylight saving time on the last Sunday in October; and
- (b) standard time during the rest of the year.
- (5) The Lieutenant Governor in Council may make regu-Power lations varying the reckoning of standard time and daylight saving time as fixed by subsection (1), (2) or (3) and varying the time in effect as fixed by subsection (4).

3. This Act comes into force on the day it receives Royal Commence-Assent.

4. The short title of this Act is the Time Amendment Act, Short title 1986.



35 ELIZABETH II, 1986

Bill 58

(Chapter 56 Statutes of Ontario, 1986)

An Act to amend the Time Act

Mr. McClellan



1st Reading April 22nd, 1986

2nd Reading April 22nd, 1986

3rd Reading November 27th, 1986

Royal Assent November 27th, 1986



1986 **Bill 58**

An Act to amend the Time Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 1 of the Time Act, being chapter 501 of the Revised Statutes of Ontario, 1980, is amended by striking out "time reckoned as standard time" in the seventh and eighth lines and inserting in lieu thereof "the time in effect as provided by this Act".
- 2. Subsection 2 (3) of the said Act is repealed and the following substituted therefor:
- (3) Daylight saving time shall be reckoned as one hour Daylight ahead of standard time.
 - (4) The time in effect shall be,

Time in effect

- daylight saving time during the period between 2 a.m. standard time on the first Sunday in April and 2 a.m. daylight saving time on the last Sunday in October; and
- (b) standard time during the rest of the year.
- (5) The Lieutenant Governor in Council may make regu-Power lations varying the reckoning of standard time and daylight saving time as fixed by subsection (1), (2) or (3) and varying the time in effect as fixed by subsection (4).

to vary

- 3. This Act comes into force on the day it receives Royal Commence-Assent.
- 4. The short title of this Act is the Time Amendment Act, Short title 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

AZON

Bill59

An Act to amend the Residential Tenancies Act

Mr. McFadden



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill removes the exemption from rent review granted to non-profit housing projects.

Bill 59 1986

An Act to amend the Residential Tenancies Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clause 134 (1) (b) of the Residential Tenancies Act, being chapter 452 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
 - (b) a rental unit situate in a non-profit co-operative housing project as defined in the *National Housing* R.S.C. 1970, *Act* (Canada).
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Residential Tenancies Short title Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill 60

An Act respecting a Register of Ontario Land Information

Mr. Martel



1st Reading
2nd Reading
3rd Reading
Royal Assent

April 22nd, 1986

EXPLANATORY NOTE

The Bill would authorize the creation of a public register showing the ownership of all privately held land in Ontario, the use of the land, and whether its owner is a resident or non-resident of Canada. Every owner, purchaser or vendor of an interest in land in Ontario would be subject to a reporting requirement.

Bill 60 1986

An Act respecting a Register of Ontario Land Information

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpretation

- (a) "Director" means the Director appointed under this Act;
- (b) "interest in land" means the fee or the equity of redemption in or a power or right to grant, assign or exercise a power of appointment in respect of land;
- (c) "non-resident corporation" means a corporation, regardless of the jurisdiction in which it was formed or organized, that,
 - (i) is controlled directly or indirectly by one or more non-resident persons,
 - (ii) has issued shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to one or more non-resident persons,
 - (iii) has issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to any one non-resident person,
 - (iv) has a board of directors, one-half or more of which is composed of non-resident persons, or
 - (v) in the case of a corporation without share capital, has a membership, one-half or more of which is composed of non-resident persons;

- (d) "non-resident person" means,
 - (i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor a person who has been lawfully admitted to Canada for permanent residence in Canada,
 - (ii) a non-resident corporation,
 - (iii) a partnership, syndicate, association or other organization of which one-half or more of the members are non-resident persons or in which interests representing 50 per cent or more of the total value of the property of the partnership, syndicate, association or organization are beneficially owned by non-resident persons, or
 - (iv) a trust in which non-resident persons within the meaning of subclause (i), (ii) or (iii) hold 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom;
- (e) "prescribed" means prescribed by the regulations made under this Act.

Ordinarily resident defined

- (2) For the purpose of clause (1) (d), an individual shall be considered to be ordinarily resident in Canada if at the time the expression is being applied, the individual,
 - (a) has sojourned in Canada during the next preceding twenty-four months for a period of, or periods the aggregate of which is, 366 days or more;
 - (b) is a member of the Canadian Forces required to reside outside Canada;
 - (c) is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;
 - (d) is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is pre-

scribed for the purposes of paragraph 250 (1) (d) of the Income Tax Act (Canada), and resided in Can-R.S.C. 1952, ada at any time in the three month period preceding the day on which such services commenced; or

- (e) resides outside Canada and is the spouse or child of, and is living with, an individual described in clause (b), (c) or (d).
- 2.—(1) Every person who holds an interest in land in Report re Ontario on the 31st day of December, 1985 shall, on or before and use the 1st day of April, 1986, file with the Director a report in the prescribed form,

- (a) setting out the person's interest in the land;
- (b) describing the use of the land;
- (c) declaring whether the person is a non-resident person; and
- (d) setting out the municipal address and a brief description of the land.
- (2) Every person who acquires an interest in land in Ontar- Idem io, whether by way of a conveyance, purchase of shares in a corporation that has such an interest, or otherwise, on or after the 31st day of December, 1985, shall, within ninety days after the date of the conveyance or acquisition, file with the Director a report in the prescribed form,

- (a) setting out the person's interest in the land;
- (b) describing the use of the land;
- declaring whether the person is a non-resident per-(c) son; and
- (d) setting out the municipal address and a brief description of the land.
- (3) Every person who disposes of or conveys away an inter- Notice re est in land in Ontario after filing a report with respect to the land under subsection (1) or (2) shall, within ninety days after the date of the disposition or conveyance, file with the Director a notice in the prescribed form.

disposition

(4) Where a person files a report or notice under this sec- Where tion respecting an interest in land and the report or notice or report not accompanying material,

required

- (a) provides information on other persons who are also required to file a report or notice respecting the land; and
- (b) the information supplied under clause (a) is equivalent in nature and extent to the information required of a person filing a report or notice,

those other persons are not required to file a separate registration report respecting that land.

When resident deemed to be non-resident

3. For the purposes of this Act, where a person who is a resident of Canada has acquired or acquires an interest in land and knowingly holds that interest on behalf of a non-resident person, by agreement or otherwise, the first-named person shall be deemed to be a non-resident person in respect of that interest.

Contents of report and notice

4. Every report and notice shall set forth the prescribed information.

Appointment of Director 5. The Minister of Municipal Affairs may appoint a Director of a branch of the Ministry to administer and enforce this Act.

False information

6. No person shall furnish false information in any report or notice filed under this Act.

Offence

7. Every person who contravenes any provision of this Act or the regulations and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Public register **8.** The Director shall maintain all reports and notices filed under section 2 in a register and shall make the register available for inspection and copying by the public at the Director's office during ordinary business hours.

Regulations

- 9. The Lieutenant Governor in Council may make regulations.
 - (a) prescribing the form of and the information to be contained in a report under subsection 2 (1) or (2);
 - (b) prescribing the form of and the information to be contained in a notice under subsection 2 (3);
 - (c) prescribing forms other than those mentioned in clauses (a) and (b) and providing for their use.

- **10.** This Act comes into force on a day to be named by Commence-proclamation of the Lieutenant Governor.
- 11. The short title of this Act is the Ontario Land Inform- Short title ation Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill61

An Act to amend the Employment Standards Act

Mr. Mackenzie



1st Reading 2nd Reading 3rd Reading Royal Assent April 22nd, 1986

EXPLANATORY NOTES

- **SECTION 1.** The proposed new section 29 increases the vacation period to which an employee is entitled under the Act. Currently, the Act provides a two week vacation period for each employee that does not vary with the amount of employment service.
- **SECTION 2.** The proposed amendment is complementary to section 1 of the Bill. Subsection 30 (1) of the Act as it currently reads is set out below with the amended portions underlined:
- (1) The employer shall determine the period when an employee may take the vacation to which he is entitled under section 29, which may be a two week period or two periods of one week each, but in any case the employee shall be given his vacation not later than ten months after the end of the twelve month period for which the vacation was given.
- SECTION 3. The proposed amendment is complementary to section 1 of the Bill. Section 31 of the Act as it currently reads is set out below with the amended portions underlined:
- 31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay pursuant to section 29, the employer shall pay to the employee an amount equal to 4 per cent of the wages of the employee in any twelve month period or periods or part thereof and in calculating wages no account shall be taken of any vacation pay previously paid.

Bill 61 1986

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 29 of the Employment Standards Act, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- 29.—(1) Every employer shall give to each employee a Vacations vacation with pay of at least,
 - (a) two weeks in each year upon the completion of twelve months of employment;
 - (b) three weeks in each year upon the completion of sixty months of employment;
 - (c) four weeks in each year upon the completion of 120 months of employment; and
 - (d) five weeks in each year upon the completion of 240 months of employment.
- (2) The amount of pay for a vacation shall be not less than Idem an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under subsection (1) and in calculating wages no account shall be taken of any vacation pay previously paid.

2. Subsection 30 (1) of the said Act is repealed and the following substituted therefor:

(1) The employer shall determine the period when an When employee may take the vacation to which he or she is entitled to be taken under section 29, which may be a consecutive period or periods of one week each, but in any case the employee shall be given his or her vacation not later than six months after the end of the twelve month period for which the vacation was given.

3. Section 31 of the said Act is repealed and the following substituted therefor:

Vacation pay

31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay under section 29, the employer shall pay to the employee an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under section 29, and in calculating wages no account shall be taken of any vacation pay previously paid.

Commencement 4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the Employment Standards Amendment Act, 1986.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

AZON

B 56

Bill 62

An Act to protect and enhance the Quality of Drinking Water in Ontario

Mrs. Grier



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill is intended to protect and enhance drinking water quality in Ontario.

It provides opportunities for public involvement in the making of regulations to set maximum permissible levels for contaminants and other substances in drinking water. These regulations would apply to both public and private water systems.

The operator of a public water system is required to monitor water quality regularly and notify the users of the system as well as the Minister of the Environment of the results. Any user of a private water system may have the water tested by the Ministry of the Environment.

It is an offence for the operator of a public water system to provide water which contravenes the regulations or to fail to comply with monitoring and notice requirements. It is an offence for anyone to pollute a public or private water system.

The Bill permits water users to sue to recover damages for contraventions of the Act and gives any person standing to seek judicial review against the Minister of the Environment.

The Minister is authorized to commission research into matters related to drinking water quality and an advisory council is created to assist the Minister.

Bill 62 1986

An Act to protect and enhance the Quality of Drinking Water in Ontario

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Interpretation

- (a) "Board" means the Water Review Board;
- (b) "contaminant" means any biological, chemical or physical agent or combination thereof prescribed as a contaminant;
- (c) "Gazette" means The Ontario Gazette:
- (d) "Minister" means the Minister of the Environment;
- (e) "prescribed" means prescribed by the regulations;
- (f) "private water system" means any water system that has fewer than fifteen service connections or regularly serves fewer than twenty-five individuals;
- (g) "public water supplier" means a person who operates a public water system;
- (h) "public water system" means any water system that has fifteen or more service connections or regularly serves twenty-five or more individuals;
- (i) "substance" means anything that affects the odour, appearance or taste of drinking water and is prescribed as a substance;
- (j) "user", when used in connection with a water system or public water supplier, means a person who obtains water from the system or supplier;

(k) "water system" means any works for the collection, supply and distribution of water that may be used as drinking water.

Purpose

2. The purpose of this Act is the protection and enhancement of drinking water quality throughout Ontario.

DUTIES OF SUPPLIERS

Duties of supplier

- 3. Every public water supplier shall,
 - (a) conduct complete water tests in accordance with the regulations, monthly or more frequently as may be prescribed by regulation, to establish contaminant and substance levels and compliance with prescribed standards:
 - (b) promptly publish the results of all tests conducted under clause (a) in a newspaper that is published in the community where the supplier's regular users reside;
 - (c) supply the results of all tests conducted under clause
 (a) to every user together with the regular water bill;
 - (d) promptly report the results of all tests conducted under clause (a) to the Minister;
 - (e) keep full records of all tests conducted under clause(a) and make them available to any person upon request;
 - (f) where a test reveals that maximum permitted contaminant levels or maximum permitted substance levels are exceeded or prescribed standards are not adhered to,
 - (i) take immediate steps to cause the water to comply with this Act and the regulations, and
 - (ii) make an alternate supply of safe drinking water available to all users until the main supply complies with this Act and the regulations.

PUBLIC INVOLVEMENT IN REGULATION-MAKING

Draft regulations concerning contaminants **4.**—(1) The Minister shall within 180 days after the day this Act comes into force publish in the Gazette a notice set-

ting forth proposed regulations under clause 14 (2) (b) and calling for briefs and submissions in connection therewith.

(2) Any person may within ninety days after the publication Objection of a notice under subsection (1) or (6) require the Board to hold a hearing into any of the proposed regulations by delivering a notice of objection to the Board.

(3) The Board shall hold any hearing required under sub- Hearing section (2) expeditiously and may consolidate any such hearings where common issues are raised.

(4) Upon completion of all hearings under subsection (2), the Board shall report its findings and conclusions to the Minister and shall provide a copy of the report to every person who delivered a notice of objection under subsection (2).

(5) Regulations under clause 14 (2) (b) shall come into Effective force on or before a day fifteen months after the coming into force of this Act.

(6) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (b), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith

Further regulations

5.—(1) The Minister shall within 240 days after the day Draft this Act comes into force publish in the Gazette a notice setting forth proposed regulations under clause 14 (2) (c) and substances calling for briefs and submissions in connection therewith.

(2) Regulations under clause 14 (2) (c) shall come into force Effective on or before a day fifteen months after the coming into force of this Act

(3) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (c), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith.

Further regulations

OFFENCES

6.—(1) No public water supplier shall cause or permit to Supplying be supplied to users,

water

(a) water containing any contaminant that exceeds the applicable maximum permitted level; or

(b) water containing any substance that contravenes a prescribed standard or exceeds the applicable maximum permitted level.

Polluting water system (2) No person shall deposit in, add to, emit or discharge into a public water system or a private water system any contaminant or substance so as to cause the water to exceed the maximum permitted level for the contaminant or substance or to contravene a prescribed standard.

Penalties

- **7.** Any person who contravenes this Act or the regulations is guilty of an offence and on conviction is liable to,
 - (a) in the case of a contravention of section 6 that relates to a contaminant, a fine not exceeding \$50,000; and
 - (b) in the case of any other contravention, a fine not exceeding \$25,000.

PRIVATE REMEDIES

Action for damages

8.—(1) Any person may, by action, recover damages caused by a contravention of this Act or the regulations from the person who committed the contravention.

Judicial review (2) Any person may apply for judicial review of the Minister's exercise or non-exercise of any power or fulfilment or non-fulfilment of any duty conferred or imposed on the Minister by this Act, whether or not the person applying is specially affected or has suffered special damages.

WATER REVIEW BOARD AND WATER ADVISORY COUNCIL

Water Review Board established

9.—(1) The Water Review Board is hereby established and shall consist of not fewer than five persons appointed by the Lieutenant Governor in Council, who shall hold office during pleasure and none of whom shall be members of the public service.

Chairman and vicechairman (2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman and another of the members as vice-chairman.

Ouorum

(3) Three members of the Board constitute a quorum.

Remuneration

(4) The members of the Board may be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines.

(5) The chairman may authorize one member of the Board One member to conduct a hearing by the Board and the member has all the hearing powers of the Board for the purpose of the hearing.

(6) The report of such member may be adopted as the deci-Report sion of the Board by two other members of the Board, one of whom shall be the chairman or vice-chairman or may be otherwise dealt with as the Board considers proper.

10.—(1) The Water Advisory Council is hereby established and shall consist of not fewer than ten and not more Advisory than fifteen persons appointed by the Lieutenant Governor in established Council, each to hold office for a term of not more than three vears.

(2) The Lieutenant Governor in Council may appoint one Chairman of the members of the Council as chairman and another of the chairman members as vice-chairman.

- (3) The composition of the Council shall be such as to pro- Members vide for competent and knowledgeable persons in matters relating to drinking water quality.
- (4) A retiring member of the Council is eligible for reap- Reappointpointment. ments
- (5) The members of the Council may be paid such remuner- Remuneration ation and expenses as the Lieutenant Governor in Council from time to time may determine.

11. The Water Advisory Council, through its chairman, Duties of shall.

- (a) advise the Minister as to the results of current research related to.
 - (i) drinking water quality, and
 - (ii) contaminants and substances and their effects;
- (b) consider any matter affecting drinking water quality that the Council or the Minister considers advisable and advise the Minister thereon.

STUDIES

12. The Minister shall cause research to be conducted Research into,

- (a) the causes, diagnosis, treatment, control and prevention of health effects associated with contaminants or substances;
- (b) the quality, quantity and availability of private water supplies;
- (c) the sources of surface and ground water contamination; and
- (d) methods of treating or purifying drinking water.

Testing of private water system 13. The Minister shall, at the request of any user of a private water system, cause the water to be tested in accordance with the regulations to establish contaminant and substance levels and compliance with prescribed standards.

Regulations

14.—(1) The Lieutenant Governor in Council may make such regulations as are advisable to protect and enhance drinking water quality throughout Ontario.

Idem

- (2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
 - (a) designating any biological, chemical or physical agents or combinations thereof as contaminants and prescribing maximum permissible contaminant levels;
 - (b) designating anything as a substance, prescribing standards for substances in water and prescribing maximum permissable substance levels;
 - (c) respecting procedures for water tests to be conducted under clause 3 (a) and section 13; and
 - (d) prescribing greater frequencies than monthly for water tests to be conducted under clause 3 (a) and prescribing the circumstances under which such more frequent tests shall be conducted.

Commencement **15.** This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the Ontario Safe Drinking Water Act, 1986.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

420N

Bill 63

An Act to amend the Travel Industry Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading 2nd Reading 3rd Reading Royal Assent June 5th, 1986



EXPLANATORY NOTES

- **SECTION 1.** Definitions of travel agent and wholesaler are being modified and made a little broader in their scope. The reference to a travel salesman is removed. This deletion is complementary to section 2 of the Bill.
- **SECTION 2.** The section is recast to clarify that agents and wholesalers are respectively registered as such. The requirement for a salesman to be registered is removed.
- SECTION 3. The amendment is complementary to section 4 of the Bill.
- SECTION 4. The provisions repealed refer to travel salesmen who will not be registered under the Act.
- **SECTION 5.** Section 21 of the Act is the "confidentiality provision". The added clauses enlarge on the exceptions to the confidentiality rule.
- **SECTION 6.** The new provision permits the Director to apply for a court order appointing a receiver and manager of a business where it appears in the public interest to do so.
- SECTION 7. Section 22 now permits the Director to freeze assets or land of a business. The new provision would allow for a court order directing the disposition of frozen assets.
- **SECTION 8.** This clarifies the authority to make regulations establishing and regulating a compensation fund.

Bill 63 1986

An Act to amend the Travel Industry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clauses 1 (e), (f) and (h) of the *Travel Industry Act*, being chapter 509 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:
 - (e) "travel agent" means a person who sells, to consumers, travel services provided by another person;
 - (h) "travel wholesaler" means a person who acquires rights to a travel service for the purpose of resale to a travel agent or who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel services provided by another person.
- 2. Section 3 of the said Act is repealed and the following substituted therefor:
- **3.**—(1) No person shall act or hold himself out as being Acting as available to act as a travel agent unless he is registered as a travel agent travel agent by the Registrar.
- (2) No person shall act or hold himself out as being available to act as a travel wholesaler unless he is registered as a travel wholesaler travel wholesaler by the Registrar.
- (3) No travel agent shall conduct business from a place at Offices of which the public is invited to deal unless it is named as an office in the registration.
- (4) Where more than one office is named in the registration, one shall be designated as the main office and the remainder as branch offices.

3. Subsections 4 (3) and (4) of the said Act are repealed and the following substituted therefor:

Integrity

(4) Without restricting the generality of clause (1) (b) and subclause (1) (c) (iii), a conviction within the previous five years for theft or for an offence under paragraph 95 (h), (i), (j) or (m) of the *Immigration Act*, 1976 (Canada) is sufficient grounds for the purpose of those provisions.

1976-77, c. 52 (Can.)

4. Sections 12 and 14 of the said Act are repealed and the following substituted therefor:

Notice of material changes

- **12.** Every travel agent and travel wholesaler shall, within five days after the event, notify the Registrar in writing of,
 - (a) any change in its address for service; and
 - (b) any change in the officers in the case of a corporation or of the members in the case of a partnership.
- 5. Subsection 21 (1) of the said Act is amended by adding thereto the following clauses:
 - (aa) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act:
 - (ab) to a law enforcement agency.
- **6.** The said Act is amended by adding thereto the following section:

Appointment of receiver and manager

- 21a.—(1) The Director may when he,
 - (a) has ordered or is about to order an investigation under section 20;
 - (b) has made or is about to make a directive under section 22;
 - (c) has reasonable and probable grounds to believe that a person registered under this Act has failed or is about to fail to provide contracted and paid for travel services to a client;
 - (d) is advised that a proposal to suspend or revoke a registration under section 5 or to temporarily suspend a registration under section 7 has been made; or

(e) is advised that an investigation under section 19 has been ordered.

apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved travel agent or travel wholesaler.

(2) A judge, upon an application without notice being Idem made under subsection (1), may, where he considers it in the public interest and subject to the Bankruptcy Act, appoint a R.S.C. 1970. receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

(3) An appointment made under subsection (2) may be Extension extended, upon an application without notice, for an additional period not exceeding sixty days.

(4) A receiver and manager appointed under subsection (2) Receiver shall take possession and control of the assets of the business and m taking and shall thereafter conduct the business and take such steps control as in his opinion should be taken toward its rehabilitation and, for such purposes, the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

- exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business, receive the incomes and revenues of the business
- (5) An order made under this section may be enforced in Enforcement the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

- (6) Upon an application being made under this section, the Rules of rules of practice of the Supreme Court apply. practice
- 7. Section 22 of the said Act is amended by adding thereto the following subsection:

Application re disposition

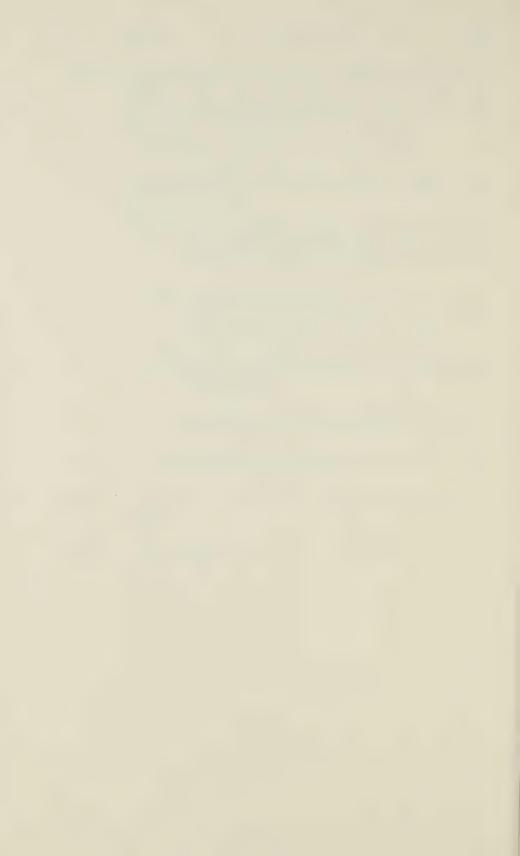
- (6) The Director may, where he has given a direction under subsection (1) or a notice under subsection (4), apply to a judge or a local judge of the Supreme Court who may make an order as to the disposition of assets, trust funds or land affected by the direction or notice and as to costs.
 - 8.—(1) Clause 27 (j) of the said Act is repealed.
- (2) Section 27 of the said Act is amended by adding thereto the following clauses:
 - (o) providing for the establishment, maintenance and administration of a compensation fund in trust by travel agents and travel wholesalers and prescribing the form and terms of the trust;
 - (p) providing for the payment of levies into the compensation fund by travel agents and travel whole-salers and prescribing the amounts thereof;
 - (q) providing for payment out of the compensation fund of claims and procedures to be followed in respect thereto;
 - (r) requiring participation in the compensation fund by travel agents and travel wholesalers;
 - (s) providing for the borrowing of moneys to supplement the compensation fund.

Commencement 9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is the Travel Industry Amendment Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

20N

56

Bill 64

An Act to amend the Dog Owners' Liability Act

Mr. Wildman



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Under the *Dog Owners' Liability Act*, a dog owner is liable for damages resulting from a bite or attack by the dog on another person. This Bill extends the liability to a bite or attack on another animal, if the animal is under a person's control. It exempts those cases where liability is provided for under the *Dog Licensing and Live Stock and Poultry Protection Act*.

Bill 64 1986

An Act to amend the Dog Owners' Liability Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 (1) of the *Dog Owners' Liability Act*, being chapter 124 of the Revised Statutes of Ontario, 1980, is amended by adding at the end thereof "or on another animal if the other animal is under a person's control".
- (2) Section 2 of the said Act is amended by adding thereto the following subsection:
- (1a) Subsection (1) does not apply to damage resulting Exception from a bite or attack on live stock or poultry as defined by section 8 of the *Dog Licensing and Live Stock and Poultry* R.S.O. 1980, *Protection Act.*
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Dog Owners' Liability Short title Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

420N

Bill 65

An Act to amend the Labour Relations Act

The Hon. W. Wrye Minister of Labour

1st Reading 2nd Reading

April 22nd, 1986

April 22nd, 1986

3rd Reading Royal Assent



(Reprinted as amended by the Resources Development Committee)

EXPLANATORY NOTE

The purpose of the Bill is to provide for the settlement of first collective agreements by arbitration where collective bargaining has been frustrated.

Bill 65 1986

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Labour Relations Act, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

40a.—(1) Where the parties are unable to effect a first First collective agreement and the Minister has released a notice arbitration that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

(2) The Board shall consider and make its decision on an Duty of application under subsection (1) within thirty days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 15 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of.

- the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement: or
- (d) any other reason the Board considers relevant.
- (3) Where a direction is given under subsection (2), the Choice of first collective agreement between the parties shall be settled by a board of arbitration unless within seven days of the giv-

arbitrator

ing of the direction the parties notify the Board that they have agreed that the Board arbitrate the settlement.

Arbitration by Board

- (4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,
 - (a) shall appoint a date for and commence a hearing within twenty-one days of the giving of the notice to the Board; and
 - (b) shall determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

Private arbitration

(5) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within ten days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chairman.

Idem

(6) If a party fails to make an appointment as required by subsection (5) or if the appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister upon the request of either party.

Idem

(7) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 108 applies to the board of arbitration, its decision and proceedings as if it were the Board.

Idem

- (8) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:
 - 1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
 - 2. Each party shall pay one-half of the remuneration and expenses of the chairman.

Idem R.S.O. 1980, c. 205 (9) Subsections 6 (8), (9), (10), (12), (13), (14), (17) and (18) of the *Hospital Labour Disputes Arbitration Act* and subsections 44 (8) and (10) of this Act apply with necessary modifications to a board of arbitration established under this section.

- (10) The date of the first hearing of a board of arbitration Idem appointed under this section shall not be later than twenty-one days after the appointment of the chairman.
- (11) A board of arbitration appointed under this section Idem shall determine all matters in dispute and release its decision within forty-five days of the commencement of its hearing of the matter.
- (12) The Minister may appoint a mediator to confer with Mediation the parties and endeavour to effect a settlement.
- (13) The employees in the bargaining unit shall not strike Effect of and the employer shall not lock out such employees where a direction on strike or direction has been given under subsection (2) and, where such lock-out a direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or
- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lockout commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations.
- (14) The requirement to reinstate employees set out in subsection (13) applies notwithstanding that replacement employees may be performing the work of employees in the bargaining unit, but the said subsection does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out.

application

(15) Where a direction has been given under subsection Working (2), the rates of wages and all other terms and conditions of not employment and all rights, privileges and duties of the to be altered employer, the employees and the trade union in effect at the time notice was given under section 14 shall continue in effect,

or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled.

Nonapplication

 $(\underline{16})$ Subsection (15) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(17) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment.

Effect of settlement

(18) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to such day as the Board may fix, but not earlier than the day on which notice was given under section 14.

Extension of time

(19) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, notwithstanding the expiration of such time.

Nonapplication

- (20) This section does not apply to the negotiation of a first collective agreement,
 - (a) where one of the parties is an employers' organization accredited under section 127 as a bargaining agent for employers; or
 - (b) where the agreement is a provincial agreement within the meaning of section 137.

Application

(21) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after the coming into force of this section and the bargaining rights have been acquired since the 1st day of January, 1984 and continue to exist at the time of an application under subsection (1).

Application for termination, etc.

- (22) Notwithstanding subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,
 - (a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and

(b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit.

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered.

- (23) An application for a declaration that a trade union no Idem longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 57 (2).
- (24) An application for certification by another trade union Idem as bargaining agent for employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 5 (4), (5) and (6).
- (25) The Arbitrations Act does not apply to an arbitration R.S.O. 1980, under this section.

does not

2. This Act comes into force on the day it receives Royal Commence-Assent.

3. The short title of this Act is the Labour Relations Amend- Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

A20N B 3 56

Bill 65

(Chapter 17 Statutes of Ontario, 1986)

An Act to amend the Labour Relations Act

The Hon. W. Wrye Minister of Labour



1st Reading 1

April 22nd, 1986

2nd Reading

April 22nd, 1986

3rd Reading

May 26th, 1986

Royal Assent

May 26th, 1986



Bill 65 1986

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Labour Relations Act, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 40a.—(1) Where the parties are unable to effect a first First collective agreement and the Minister has released a notice arbitration that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

(2) The Board shall consider and make its decision on an Duty of application under subsection (1) within thirty days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 15 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.
- (3) Where a direction is given under subsection (2), the Choice of first collective agreement between the parties shall be settled by a board of arbitration unless within seven days of the giv-

arbitrator

ing of the direction the parties notify the Board that they have agreed that the Board arbitrate the settlement.

Arbitration by Board

- (4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,
 - (a) shall appoint a date for and commence a hearing within twenty-one days of the giving of the notice to the Board: and
 - (b) shall determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

Private arbitration

(5) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within ten days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chairman

Idem

(6) If a party fails to make an appointment as required by subsection (5) or if the appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister upon the request of either party.

Idem

(7) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 108 applies to the board of arbitration, its decision and proceedings as if it were the Board.

Idem

- (8) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:
 - 1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
 - Each party shall pay one-half of the remuneration and expenses of the chairman.

Idem c. 205

(9) Subsections 6 (8), (9), (10), (12), (13), (14), (17) and R.S.O. 1980. (18) of the Hospital Labour Disputes Arbitration Act and subsections 44 (8) and (10) of this Act apply with necessary modifications to a board of arbitration established under this section.

(10) The date of the first hearing of a board of arbitration Idem appointed under this section shall not be later than twenty-one days after the appointment of the chairman.

LABOUR RELATIONS

(11) A board of arbitration appointed under this section Idem shall determine all matters in dispute and release its decision within forty-five days of the commencement of its hearing of the matter.

(12) The Minister may appoint a mediator to confer with Mediation the parties and endeavour to effect a settlement.

(13) The employees in the bargaining unit shall not strike Effect of and the employer shall not lock out such employees where a direction strike or direction has been given under subsection (2) and, where such lock-out a direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or
- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lockout commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations.
- (14) The requirement to reinstate employees set out in sub- Nonsection (13) applies notwithstanding that replacement employees may be performing the work of employees in the bargaining unit, but the said subsection does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out.

application

(15) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of not employment and all rights, privileges and duties of the to be altered employer, the employees and the trade union in effect at the time notice was given under section 14 shall continue in effect,

or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled.

Nonapplication (16) Subsection (15) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(17) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment.

Effect of settlement

(18) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to such day as the Board may fix, but not earlier than the day on which notice was given under section 14.

Extension of time

(19) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, notwithstanding the expiration of such time.

Nonapplication

- (20) This section does not apply to the negotiation of a first collective agreement,
 - (a) where one of the parties is an employers' organization accredited under section 127 as a bargaining agent for employers; or
 - (b) where the agreement is a provincial agreement within the meaning of section 137.

Application

(21) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after the coming into force of this section and the bargaining rights have been acquired since the 1st day of January, 1984 and continue to exist at the time of an application under subsection (1).

Application for termination,

- (22) Notwithstanding subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,
 - (a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and

(b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit,

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered

- (23) An application for a declaration that a trade union no Idem longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 57 (2).
- (24) An application for certification by another trade union Idem as bargaining agent for employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 5 (4), (5) and (6).
- (25) The Arbitrations Act does not apply to an arbitration R.S.O. 1980, under this section

does not apply

2. This Act comes into force on the day it receives Royal Commence-Assent.

3. The short title of this Act is the Labour Relations Amend- Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

A20N B

Bill 66

An Act to amend the Business Corporations Act, 1982

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading
2nd Reading

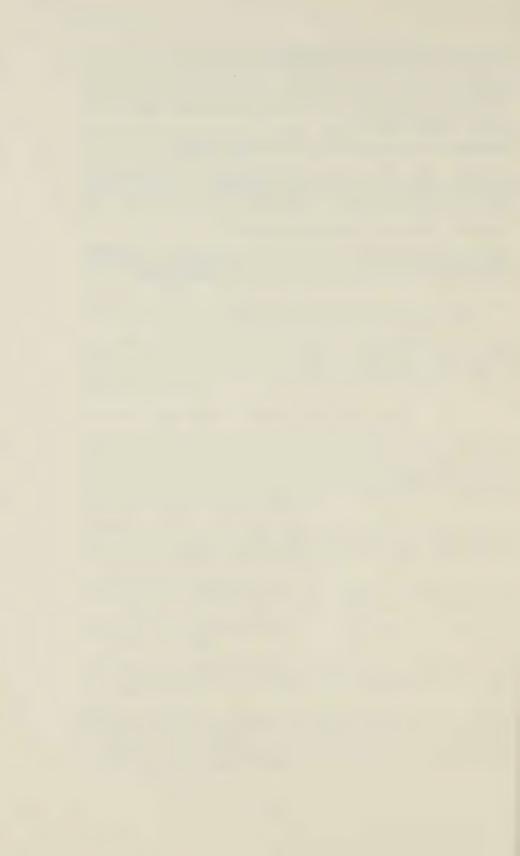
April 22nd, 1986

3rd Reading
Royal Assent

EXPLANATORY NOTES

- **SECTION 1.** The provision is recast to clarify that the Act applies only to "bodies corporate with share capital" and not to corporations incorporated under the *Corporations Act.*
- SECTION 2. Subsection 14 (4) of the Act, as recast, is new. Subsection 14 (5) is a restatement of the current subsection 14 (4). Subsection 14 (1) is recast to take into account the new subsection 14 (4).
- SECTIONS 3 and 15. Sections 25 and 167 of the Act are amended to provide that where shares are to be issued in one or more series, directors may amend the corporation's articles or the articles themselves may fix the number of shares in and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of a series.
- **SECTION 4.** The provision is recast to clarify that the powers of the directors to declare, and the corporation to pay, a dividend on shares is subject to the articles and to any unanimous shareholder agreement.
- SECTIONS 5, 6 and 8. The effect of the changes to sections 42, 45 and 56 of the Act is to permit securities dealers to police the ownership of their publicly traded shares.
- SECTIONS 7 and 9. The effect of the changes to the definitions in subsection 53 (1) and the changes to section 85 of the Act is to permit clearing agencies to record transfers and pledges of securities, including securities issued by governments or their agencies as well as partnerships, by means of computer entries as an alternative to the issuance and use of security certificates.
- SECTION 10. The amendment corrects an internal section reference.
- SECTION 11. Section 125 of the Act deals with changes in the number of directors of a corporation. The proposed subsection (1a) provides that where a corporation has by special by-law increased or decreased the number of its directors as set out in the articles, in compliance with a predecessor of the Act, the special by-law shall be deemed to be effective and constitute an amendment to the articles of the corporation. The proposed subsection (2a) is intended to clarify subsection (2).
- **SECTION 12.** Section 126 of the Act deals with meetings of directors. Subsection 126 (4) is recast to provide that where a corporation has fewer than three directors all must be present to constitute a quorum. Subsection 126 (6) is recast to allow business to be transacted by directors if one of two is Canadian.
- SECTION 13. Subsection 138 (2) of the Act is amended in two places by changing "shares" to "voting securities" so that the wording of the subsection is more precise.
- **SECTION 14.** The added section to Part XII of the Act provides for the effective date of an auditor's resignation.
- SECTION 16. The subsection being repealed provides that where a matter that constitutes an arrangement could be accomplished by articles of amendment, the latter procedure must be followed.
- SECTION 17. Subsections are being added to section 184 of the Act, which deals with the rights of dissenting shareholders, to provide specifically that a negative proxy does not constitute a written objection for purposes of subsection 184 (6) and to require that the notice of the adoption of a resolution under subsection 184 (7) must state the resulting rights and steps to be taken by a dissenting shareholder.

- **SECTION 18.** Subsection 239 (1) of the Act is recast to provide that the Director may, in exercising his discretion, cancel a certificate issued under the Act or a predecessor of the Act.
- **SECTION 19.** The amendment removes the references to dissolution of a corporation under section 238, 239 or 240. A corporation can be dissolved under certain other sections. The substitution reflects this.
- SECTION 20. The amendment corrects an internal section reference.
- **SECTION 21.** The provision is recast to clarify that financial statements of corporations filed with the Director for purposes of making application for an exemption from the audit requirements in section 148 of the Act are confidential and not available to the public.
- SECTION 22. The power to make regulations is expanded.
- **SECTION 23.** The provision is recast to provide that the Director in endorsing corrected certificates may correct certificates or articles endorsed or issued under a predecessor of the Act and that a corporation may make application for a corrected certificate.



Bill 66 1986

An Act to amend the Business Corporations Act, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the *Business Corporations Act*, 1982, being chapter 4, is repealed and the following substituted therefor:
- **2.**—(1) This Act, except where it is otherwise expressly Application provided, applies to every body corporate with share capital,
 - (a) incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
 - (b) incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its registered office and carries on business in Ontario; or
 - (c) incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation within the meaning of the *Loan and Trust Corporations Act* except as pro- R.S.O. 1980, vided by that Act.

- (2) Notwithstanding *The Railways Act*, being chapter 331 of ^{Idem} the Revised Statutes of Ontario, 1950, and subject to subsection 167 (5), this Act applies to a body corporate with share capital that is a company as defined in that Act but that is not engaged in constructing or operating a railway, street railway or incline railway.
- (3) This Act does not apply to a body corporate with share Idem capital that,

R.S.O. 1980, c. 95

- (a) is a company within the meaning of the *Corporations Act* and has objects in whole or in part of a social nature:
- R.S.O. 1980, c. 91
- (b) is a corporation to which the *Co-operative Corporations Act* applies;
- (c) is a corporation that is an insurer within the meaning of subsection 141 (1) of the *Corporations Act*; or

R.S.O. 1980, c. 102

- (d) is a corporation to which the *Credit Unions and Caisses Populaires Act* applies.
- 2. Subsections 14 (1) and (4) of the said Act are repealed and the following substituted therefor:

Registered office

(1) A corporation shall at all times have a registered office in the municipality or geographic township within Ontario specified in its articles or in a special resolution made under subsection (4).

Change of registered office

(4) A corporation may by special resolution change the municipality or geographic township in which its registered office is located to another place in Ontario and, if it does so, shall file a certified copy of the resolution with the Director within ten days after passing the resolution.

Validity

- (5) Failure to file as set out in subsection (3) or (4) does not affect the validity of the resolution.
- 3. Subsections 25 (1), (4) and (5) of the said Act are repealed and the following substituted therefor:

Special shares in series

- (1) The articles, subject to the limitations set out in them,
 - (a) may authorize the issue of any class of shares in one or more series and may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series; and
 - (b) may, where the articles authorize the issue of any class of shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restric-

tions and conditions attaching to the shares of each series.

(4) Where, in respect of a series of shares, the directors Articles designating exercise the authority conferred on them, before the issue of special shares shares of such series, the directors shall send to the Director articles of amendment in the prescribed form designating such series.

(5) On receipt of articles of amendment designating a series Certificate of shares under subsection (4), the Director shall endorse shares thereon, in accordance with section 272, a certificate which shall constitute the certificate of amendment.

4. Subsection 38 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to its articles and any unanimous shareholder Declaration agreement, the directors may declare and a corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a corporation may pay a dividend in money or property.

of dividends

- 5.—(1) Clause 42 (2) (c) of the said Act is amended by inserting after "any" in the second line "prescribed class of" and by striking out "as a dealer" in the fifth and sixth lines.
- (2) Subsection 42 (3) of the said Act is repealed and the following substituted therefor:
- (3) Nothing in clause (2) (c) or (d) authorizes a corporation Application to impose restrictions on the issue, transfer or ownership of subs. (2) shares of any class or series of which any shares are outstand- (c, d) ing unless,

- (a) in the case of restrictions in respect of a class, the shares of the class; or
- (b) in the case of restrictions in respect of a series, the shares of the series.

are already subject to restrictions for the purpose described in clause (2) (c) or (d).

(3) Clause 42 (4) (b) of the said Act is repealed and the following substituted therefor:

(b) prohibit the ownership of its shares,

6. Subsection 45 (1) of the said Act is repealed and the following substituted therefor:

BUSINESS CORPORATIONS

Restricted shares held in contravention—sale by corporation (1) A corporation that has restrictions on the issue, transfer or ownership of its shares of any class or series in order to assist the corporation or any of its affiliates or associates to qualify,

R.S.O. 1980, c. 466

- (a) under the *Securities Act* or similar legislation of a province or territory to obtain, hold or renew registration; or
- (b) for membership in a stock exchange in Ontario recognized as such by the Commission,

by reason of limiting to a specified level the ownership of its shares by any prescribed class of person or,

(c) under any prescribed Act of Canada or a province or ordinance of a territory to receive licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control,

may, for a purpose set out in clause (a), (b) or (c) or, in the case of a corporation under clause (c), for the purpose of attaining or maintaining a level of Canadian ownership or control specified in its articles, under such conditions and after giving such notice as may be prescribed, sell, as if it were the owner thereof, any of the restricted shares that are owned, or that the directors determine in such manner as may be prescribed may be owned, contrary to the restrictions.

7.—(1) Clauses 53 (1) (d), (f), (g), (n) and (u) of the said Act are repealed and the following substituted therefor:

- (d) "bona fide purchaser" means a purchaser for value, in good faith and without notice of any adverse claim,
 - (i) who takes delivery of a security certificate in bearer form or order form or of a security certificate in registered form issued to him or endorsed to him or endorsed in blank.

- (ii) in whose name an uncertificated security is registered or recorded in records maintained by or on behalf of the issuer as a result of the issue or transfer of the security to him, or
- (iii) who is a transferee or pledgee as provided in section 85;
- (f) "clearing agency" means a person designated as a recognized clearing agency by the Commission;
- (g) "custodian" means a person acting as a custodian for a clearing agency;
- (n) "issuer" means a body corporate,
 - (i) that is required by this Act to maintain a securities register,

.

- (ii) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests,
- (iii) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
- (iv) that becomes responsible for or in place of any other person described as an issuer in this Part;

.

(u) "security" means a share, participation or other interest in property, rights or an enterprise of an issuer, or an obligation of an issuer, or any right to acquire such a share, participation, interest or obligation, of a type commonly dealt in upon securities exchanges or markets or commonly recognized as a

medium for investment in any area in which it is issued or dealt in:

- (ua) "security certificate" means an instrument in bearer, order or registered form, issued by an issuer evidencing a security.
- (2) Subsection 53 (1) of the said Act is amended by adding thereto the following clause:
 - (xa) "uncertificated security" means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of the issuer.
- **8.** Subsection 56 (8) of the said Act is repealed and the following substituted therefor:

Notice of restrictions

- (8) Where the articles of a corporation restrict the issue, transfer or ownership of shares of any class or series for a purpose set out in clause 42 (2) (c) or (d), the restriction or a reference to it shall be noted conspicuously on every share certificate of the corporation evidencing a share that is subject to the restriction where the certificate is issued after the day on which the share becomes subject to the restriction under this Act and any reference to the restriction shall include a statement that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of the restriction.
- **9.**—(1) Subsection 85 (1) of the said Act is repealed and the following substituted therefor:

Transfer through clearing agency

- (1) If a security shown in the records of a clearing agency is evidenced by,
 - (a) a security certificate in the custody of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing agency or a custodian or of a nominee of either; or
 - (b) an uncertificated security registered or recorded in records maintained by or on behalf of the issuer in the name of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

- (2) Subsection 85 (5) of the said Act is repealed and the following substituted therefor:
- (5) A person depositing a security certificate or an uncerti-Holder ficated security with a clearing agency, or a transferee or pledgee of a security under this section, is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case may be, for all purposes, including, if a pledge or the creation of a security interest is intended, for the purposes of the Personal Property R.S.O. 1980, Security Act.

- (3) Subsection 85 (8) of the said Act is repealed and the following substituted therefor:
 - (8) In this section,

Definitions

- "issuer" includes a person, other than an individual, and a government or agency thereof,
 - (a) that is required by this Act to maintain a securities register,
 - that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests.
 - that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (d) that becomes responsible for or in place of any other person described as an issuer in this section;
- "security", "security certificate" and "uncertificated security", in addition to the meaning each has for the purposes of Part VI, are extended to include a security, security certificate or uncertificated security, as the case may be, of an issuer within the meaning of this section.

- **10.** Subsection 96 (4) of the said Act is amended by striking out "subsection 111 (1)" in the fifth line and inserting in lieu thereof "section 111".
- 11. Section 125 of the said Act is amended by adding thereto the following subsections:

Articles amendment

(1a) Where a corporation has increased or decreased the number of directors by special by-law under a predecessor of this Act, the special by-law shall be deemed to constitute an amendment to its articles.

.

Idem

- (2a) Where no resolution has been filed under subsection (2), the number of directors of the corporation shall be the number of directors named in its articles.
- 12. Subsections 126 (4) and (6) of the said Act are repealed and the following substituted therefor:

Idem

(4) Where a corporation has fewer than three directors, all directors must be present at any meeting of directors to constitute a quorum.

. . . .

Transacting business

- (6) Directors, other than directors of a non-resident corporation, shall not transact business at a meeting of directors unless a majority of directors present are resident Canadians or, where a corporation has fewer than three directors, one of the directors present is a resident Canadian.
- 13. Clauses 138 (2) (c) and (d) of the said Act are repealed and the following substituted therefor:
 - (c) a person is deemed to own beneficially, voting securities beneficially owned by a body corporate controlled by him directly or indirectly; and
 - (d) a body corporate is deemed to own beneficially, voting securities beneficially owned by its affiliates.
- 14. The said Act is amended by adding thereto the following section:

Resignation of auditor

149a. A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

- 15.—(1) Section 167 of the said Act is amended by adding thereto the following subsection:
- (1a) Where the directors are authorized by the articles to Idem divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide.

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- (2) Subsection 167 (4) of the said Act is amended by inserting after "subsection" in the second line "(1a) or".
 - **16.** Subsection 181 (7) of the said Act is repealed.
- 17. Section 184 of the said Act is amended by adding thereto the following subsections:
- (6a) The execution or exercise of a proxy does not consti- Idem tute a written objection for purposes of subsection (6).
- (7a) A notice sent under subsection (7) shall set out the Idem rights of the dissenting shareholder and the procedures to be followed to exercise those rights.
- 18. Subsection 239 (1) of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:
- (1) Where sufficient cause is shown to the Director, not- Cancellation withstanding the imposition of any other penalty in respect of certificate, thereof and in addition to any rights he may have under this etc., by or any other Act, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any other certificate issued or endorsed under this Act or a predecessor of this Act, and.

- 19. Subsection 241 (1) of the said Act is amended by striking out "under section 238, 239 or 240" in the second line and inserting in lieu thereof "under this Act".
- 20. Clause 257 (1) (c) of the said Act is amended by striking out "subsection 111 (1)" in the fourth line and inserting in lieu thereof "section 111".
- 21. Section 269 of the said Act is amended by adding thereto the following subsection:

Privileged documents

- (3) Subsections (1) and (2) do not apply in respect of documents and financial statements required, by this Act or the regulations, to be filed with the Director with an application for exemption from the requirements of Part XII of this Act.
- 22. Paragraphs 6 and 25 of section 271 of the said Act are repealed and the following substituted therefor:
 - 6. prescribing the form and content of information circulars and proxies required by Part VIII and the discretionary authority that may be conferred in proxies;

.

17a. prescribing that, for the purposes of Part XII of this Act, the standards, as they exist from time to time, of a prescribed accounting body shall be followed;

.

- 25. prescribing, with respect to a corporation that has imposed restrictions on the issue, transfer or ownership of its shares for a purpose under subsection 42 (2),
 - i. the disclosure required of the restrictions in documents issued or published by the corporation,
 - ii. the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation.
 - iii. the limitations on voting rights of any shares held contrary to the articles of the corporation, and
 - iv. the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the rights of the corporation and its directors, employees or agents to rely on the disclosure and the effects of the reliance;
- 25a. prescribing persons or classes of persons for the purpose of clause 42 (2) (c) and prescribing the

manner of computing the ownership of shares of a corporation by persons for such purpose:

- 27. prescribing classes of persons for the purposes of subparagraph ii of paragraph 37 of subsection 1 (1);
- 28. prescribing any matter referred to in this Act as prescribed by the regulations.

23. Subsection 273 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a certificate endorsed or issued under this Act or Where error in respect of a predecessor of this Act contains an error or where a certificate certificate cate has been endorsed or issued on articles or any other documents that contain an error,

- (a) the corporation, its directors or shareholders may apply to the Director for a corrected certificate and shall surrender the certificate and related articles or documents: or
- (b) the corporation shall upon the request of the Director surrender the certificate and related articles or documents.

and, after giving the corporation an opportunity to be heard, where the Director is of the opinion that it is appropriate to so do and is satisfied that such steps have been taken by the corporation as the Director required, the Director shall endorse a corrected certificate.

24.—(1) This Act, except sections 18 and 23, comes into Commenceforce on a day to be named by proclamation of the Lieutenant Governor.

- (2) Sections 18 and 23 shall be deemed to have come into Idem force on the 29th day of July, 1983.
- 25. The short title of this Act is the Business Corporations Short title Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 66

An Act to amend the Business Corporations Act, 1982

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading

April 22nd, 1986

2nd Reading

November 18th, 1986

3rd Reading

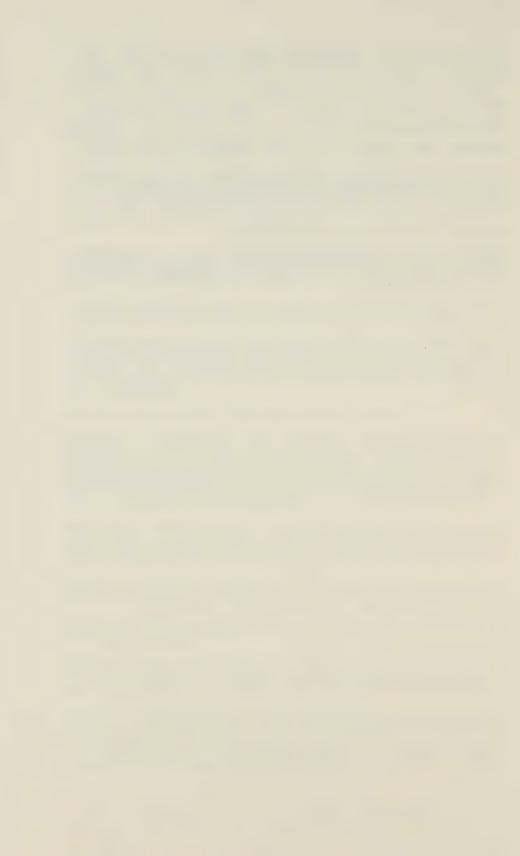
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

- **SECTION 1.** The provision is recast to clarify that the Act applies only to "bodies corporate with share capital" and not to corporations incorporated under the *Corporations Act*.
- **SECTION 2.** Subsection 14 (4) of the Act, as recast, is new. Subsection 14 (5) is a restatement of the current subsection 14 (4). Subsection 14 (1) is recast to take into account the new subsection 14 (4).
- **SECTIONS 3 and 15.** Sections 25 and 167 of the Act are amended to provide that where shares are to be issued in one or more series, directors may amend the corporation's articles or the articles themselves may fix the number of shares in and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of a series.
- **SECTION 4.** The provision is recast to clarify that the powers of the directors to declare, and the corporation to pay, a dividend on shares is subject to the articles and to any unanimous shareholder agreement.
- SECTIONS 5, 6 and 8. The effect of the changes to sections 42, 45 and 56 of the Act is to permit securities dealers to police the ownership of their publicly traded shares.
- **SECTIONS 7 and 9.** The effect of the changes to the definitions in subsection 53 (1) and the changes to section 85 of the Act is to permit clearing agencies to record transfers and pledges of securities, including securities issued by governments or their agencies as well as partnerships, by means of computer entries as an alternative to the issuance and use of security certificates.
- **SECTION 10.** The amendment corrects an internal section reference.
- **SECTION 11.** Section 125 of the Act deals with changes in the number of directors of a corporation. The proposed subsection (1a) provides that where a corporation has by special by-law increased or decreased the number of its directors as set out in the articles, in compliance with a predecessor of the Act, the special by-law shall be deemed to be effective and constitute an amendment to the articles of the corporation. The proposed subsection (2a) is intended to clarify subsection (2).
- **SECTION 12.** Section 126 of the Act deals with meetings of directors. Subsection 126 (4) is recast to provide that where a corporation has fewer than three directors all must be present to constitute a quorum. Subsection 126 (6) is recast to allow business to be transacted by directors if one of two is Canadian.
- **SECTION 13.** Subsection 138 (2) of the Act is amended in two places by changing "shares" to "voting securities" so that the wording of the subsection is more precise.
- **SECTION 14.** The added section to Part XII of the Act provides for the effective date of an auditor's resignation.
- **SECTION 16.** The subsection being repealed provides that where a matter that constitutes an arrangement could be accomplished by articles of amendment, the latter procedure must be followed.
- SECTION 17. Subsections are being added to section 184 of the Act, which deals with the rights of dissenting shareholders, to provide specifically that a negative proxy does not constitute a written objection for purposes of subsection 184 (6) and to require that the notice of the adoption of a resolution under subsection 184 (7) must state the resulting rights and steps to be taken by a dissenting shareholder.

- **SECTION 18.** Subsection 239 (1) of the Act is recast to provide that the Director may, in exercising his discretion, cancel a certificate issued under the Act or a predecessor of the Act.
- **SECTION 19.** The amendment removes the references to dissolution of a corporation under section 238, 239 or 240. A corporation can be dissolved under certain other sections. The substitution reflects this.
- SECTION 20. The amendment corrects an internal section reference.
- **SECTION 21.** The provision is recast to clarify that financial statements of corporations filed with the Director for purposes of making application for an exemption from the audit requirements in section 148 of the Act are confidential and not available to the public.
- SECTION 22. The power to make regulations is expanded.
- **SECTION 23.** The provision is recast to provide that the Director in endorsing corrected certificates may correct certificates or articles endorsed or issued under a predecessor of the Act and that a corporation may make application for a corrected certificate.



Bill 66 1986

An Act to amend the **Business Corporations Act. 1982**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the Business Corporations Act, 1982, being chapter 4, is repealed and the following substituted therefor:
- 2.—(1) This Act, except where it is otherwise expressly Application provided, applies to every body corporate with share capital,
 - (a) incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada:
 - (b) incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its registered office and carries on business in Ontario; or
 - (c) incorporated by or under a general or special Act of the Legislature.

but this Act does not apply to a corporation within the meaning of the Loan and Trust Corporations Act except as pro- R.S.O. 1980, vided by that Act.

- (2) Notwithstanding *The Railways Act*, being chapter 331 of Idem the Revised Statutes of Ontario, 1950, and subject to subsection 167 (5), this Act applies to a body corporate with share capital that is a company as defined in that Act but that is not engaged in constructing or operating a railway, street railway or incline railway.
- (3) This Act does not apply to a body corporate with share Idem capital that,

R.S.O. 1980, c. 95

- (a) is a company within the meaning of the *Corporations Act* and has objects in whole or in part of a social nature;
- R.S.O. 1980, c. 91
- (b) is a corporation to which the *Co-operative Corporations Act* applies;
- (c) is a corporation that is an insurer within the meaning of subsection 141 (1) of the *Corporations Act*; or

R.S.O. 1980, c. 102

- (d) is a corporation to which the *Credit Unions and Caisses Populaires Act* applies.
- 2. Subsections 14 (1) and (4) of the said Act are repealed and the following substituted therefor:

Registered office

(1) A corporation shall at all times have a registered office in the municipality or geographic township within Ontario specified in its articles or in a special resolution made under subsection (4).

Change of registered

(4) A corporation may by special resolution change the municipality or geographic township in which its registered office is located to another place in Ontario and, if it does so, shall file a certified copy of the resolution with the Director within ten days after passing the resolution.

Validity

- (5) Failure to file as set out in subsection (3) or (4) does not affect the validity of the resolution.
- 3. Subsections 25 (1), (4) and (5) of the said Act are repealed and the following substituted therefor:

Special shares in series

- (1) The articles, subject to the limitations set out in them,
 - (a) may authorize the issue of any class of shares in one or more series and may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series; and
 - (b) may, where the articles authorize the issue of any class of shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restric-

tions and conditions attaching to the shares of each series.

(4) Where, in respect of a series of shares, the directors Articles exercise the authority conferred on them, before the issue of special shares shares of such series, the directors shall send to the Director articles of amendment in the prescribed form designating such series.

(5) On receipt of articles of amendment designating a series Certificate of shares under subsection (4), the Director shall endorse shares thereon, in accordance with section 272, a certificate which shall constitute the certificate of amendment.

- 4. Subsection 38 (1) of the said Act is repealed and the following substituted therefor:
- (1) Subject to its articles and any unanimous shareholder Declaration agreement, the directors may declare and a corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a corporation may pay a dividend in money or property.

- 5.—(1) Clause 42 (2) (c) of the said Act is amended by inserting after "any" in the second line "prescribed class of" and by striking out "as a dealer" in the fifth and sixth lines.
- (2) Subsection 42 (3) of the said Act is repealed and the following substituted therefor:
- (3) Nothing in clause (2) (c) or (d) authorizes a corporation Application to impose restrictions on the issue, transfer or ownership of subs. (2) shares of any class or series of which any shares are outstand- (c, d) ing unless,

- (a) in the case of restrictions in respect of a class, the shares of the class; or
- (b) in the case of restrictions in respect of a series, the shares of the series.

are already subject to restrictions for the purpose described in clause (2) (c) or (d).

(3) Clause 42 (4) (b) of the said Act is repealed and the following substituted therefor:

(b) prohibit the ownership of its shares,

6. Subsection 45 (1) of the said Act is repealed and the following substituted therefor:

Restricted shares held in contravention—sale by corporation (1) A corporation that has restrictions on the issue, transfer or ownership of its shares of any class or series in order to assist the corporation or any of its affiliates or associates to qualify,

R.S.O. 1980, c. 466

- (a) under the *Securities Act* or similar legislation of a province or territory to obtain, hold or renew registration; or
- (b) for membership in a stock exchange in Ontario recognized as such by the Commission,

by reason of limiting to a specified level the ownership of its shares by any prescribed class of person or,

(c) under any prescribed Act of Canada or a province or ordinance of a territory to receive licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control,

may, for a purpose set out in clause (a), (b) or (c) or, in the case of a corporation under clause (c), for the purpose of attaining or maintaining a level of Canadian ownership or control specified in its articles, under such conditions and after giving such notice as may be prescribed, sell, as if it were the owner thereof, any of the restricted shares that are owned, or that the directors determine in such manner as may be prescribed may be owned, contrary to the restrictions.

7.—(1) Clauses 53 (1) (d), (f), (g), (n) and (u) of the said Act are repealed and the following substituted therefor:

- (d) "bona fide purchaser" means a purchaser for value, in good faith and without notice of any adverse claim,
 - (i) who takes delivery of a security certificate in bearer form or order form or of a security certificate in registered form issued to him or endorsed to him or endorsed in blank,

- (ii) in whose name an uncertificated security is registered or recorded in records maintained by or on behalf of the issuer as a result of the issue or transfer of the security to him, or
- (iii) who is a transferee or pledgee as provided in section 85;
- (f) "clearing agency" means a person designated as a recognized clearing agency by the Commission;
- (g) "custodian" means a person acting as a custodian for a clearing agency;
- (n) "issuer" means a body corporate,
 - (i) that is required by this Act to maintain a securities register,
 - (ii) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests,
 - (iii) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (iv) that becomes responsible for or in place of any other person described as an issuer in this Part;
- (u) "security" means a share, participation or other interest in property, rights or an enterprise of an issuer, or an obligation of an issuer, or any right to acquire such a share, participation, interest or obligation, of a type commonly dealt in upon securities exchanges or markets or commonly recognized as a

medium for investment in any area in which it is issued or dealt in;

- (ua) "security certificate" means an instrument in bearer, order or registered form, issued by an issuer evidencing a security.
- (2) Subsection 53 (1) of the said Act is amended by adding thereto the following clause:
 - (xa) "uncertificated security" means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of the issuer.
- **8.** Subsection 56 (8) of the said Act is repealed and the following substituted therefor:

Notice of restrictions

- (8) Where the articles of a corporation restrict the issue, transfer or ownership of shares of any class or series for a purpose set out in clause 42 (2) (c) or (d), the restriction or a reference to it shall be noted conspicuously on every share certificate of the corporation evidencing a share that is subject to the restriction where the certificate is issued after the day on which the share becomes subject to the restriction under this Act and any reference to the restriction shall include a statement that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of the restriction.
- 9.—(1) Subsection 85 (1) of the said Act is repealed and the following substituted therefor:

Transfer through clearing agency

- (1) If a security shown in the records of a clearing agency is evidenced by,
 - (a) a security certificate in the custody of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing agency or a custodian or of a nominee of either; or
 - (b) an uncertificated security registered or recorded in records maintained by or on behalf of the issuer in the name of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

- (2) Subsection 85 (5) of the said Act is repealed and the following substituted therefor:
- (5) A person depositing a security certificate or an uncerti-Holder ficated security with a clearing agency, or a transferee or pledgee of a security under this section, is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case may be, for all purposes, including, if a pledge or the creation of a security interest is intended, for the purposes of the Personal Property R.S.O. 1980, Security Act.

- (3) Subsection 85 (8) of the said Act is repealed and the following substituted therefor:
 - (8) In this section,

Definitions

- "issuer" includes a person, other than an individual, and a government or agency thereof,
 - (a) that is required by this Act to maintain a securities register,
 - (b) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests.
 - that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (d) that becomes responsible for or in place of any other person described as an issuer in this section; and
- "security", "security certificate" and "uncertificated security", in addition to the meaning each has for the purposes of Part VI, are extended to include a security, security certificate or uncertificated security, as the case may be, of an issuer within the meaning of this section.

- **10.** Subsection 96 (4) of the said Act is amended by striking out "subsection 111 (1)" in the fifth line and inserting in lieu thereof "section 111".
- 11. Section 125 of the said Act is amended by adding thereto the following subsections:

Articles amendment

(1a) Where a corporation has increased or decreased the number of directors by special by-law under a predecessor of this Act, the special by-law shall be deemed to constitute an amendment to its articles.

Idem

- (2a) Where no resolution has been <u>passed</u> under subsection (2), the number of directors of the corporation shall be the number of directors named in its articles.
- **12.** Subsections 126 (4) and (6) of the said Act are repealed and the following substituted therefor:

Idem

(4) Where a corporation has fewer than three directors, all directors must be present at any meeting of directors to constitute a quorum.

Transacting business

- (6) Directors, other than directors of a non-resident corporation, shall not transact business at a meeting of directors unless a majority of directors present are resident Canadians or, where a corporation has fewer than three directors, one of the directors present is a resident Canadian.
- 13. Clauses 138 (2) (c) and (d) of the said Act are repealed and the following substituted therefor:
 - (c) a person is deemed to own beneficially, voting securities beneficially owned by a body corporate controlled by him directly or indirectly; and
 - (d) a body corporate is deemed to own beneficially, voting securities beneficially owned by its affiliates.
- 14. The said Act is amended by adding thereto the following section:

Resignation of auditor

149a. A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

- 15.—(1) Section 167 of the said Act is amended by adding thereto the following subsection:
- (1a) Where the directors are authorized by the articles to Idem divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide.
- (2) Subsection 167 (4) of the said Act is amended by inserting after "subsection" in the second line "(1a) or".
 - 16. Subsection 181 (7) of the said Act is repealed.
- 17. Section 184 of the said Act is amended by adding thereto the following subsections:
- (6a) The execution or exercise of a proxy does not consti- Idem tute a written objection for purposes of subsection (6).
- (7a) A notice sent under subsection (7) shall set out the Idem rights of the dissenting shareholder and the procedures to be followed to exercise those rights.
- 18. Subsection 239 (1) of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:
- (1) Where sufficient cause is shown to the Director, not- Cancellation withstanding the imposition of any other penalty in respect of certificate, thereof and in addition to any rights he may have under this etc., by or any other Act, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any other certificate issued or endorsed under this Act or a predecessor of this Act, and.

- 19. Subsection 241 (1) of the said Act is amended by striking out "under section 238, 239 or 240" in the second line and inserting in lieu thereof "under this Act".
- 20. Clause 257 (1) (c) of the said Act is amended by striking out "subsection 111 (1)" in the fourth line and inserting in lieu thereof "section 111".
- 21. Section 269 of the said Act is amended by adding thereto the following subsection:

Privileged documents

- (3) Subsections (1) and (2) do not apply in respect of documents and financial statements required, by this Act or the regulations, to be filed with the Director with an application for exemption from the requirements of Part XII of this Act.
- **22.** Paragraphs 6 and 25 of section 271 of the said Act are repealed and the following substituted therefor:
 - 6. prescribing the form and content of information circulars and proxies required by Part VIII and the discretionary authority that may be conferred in proxies;
 - 17a. prescribing that, for the purposes of Part XII of this Act, the standards, as they exist from time to time, of a prescribed accounting body shall be followed;
 - 25. prescribing, with respect to a corporation that has imposed restrictions on the issue, transfer or ownership of its shares for a purpose under subsection 42 (2),
 - i. the disclosure required of the restrictions in documents issued or published by the corporation,
 - ii. the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,
 - iii. the limitations on voting rights of any shares held contrary to the articles of the corporation, and
 - iv. the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the rights of the corporation and its directors, employees or agents to rely on the disclosure and the effects of the reliance;
 - 25a. prescribing persons or classes of persons for the purpose of clause 42 (2) (c) and prescribing the

manner of computing the ownership of shares of a corporation by persons for such purpose;

- 27. prescribing classes of persons for the purposes of subparagraph ii of paragraph 37 of subsection 1 (1);
- 28. prescribing any matter referred to in this Act as prescribed by the regulations.

23. Subsection 273 (1) of the said Act is repealed and the following substituted therefor:

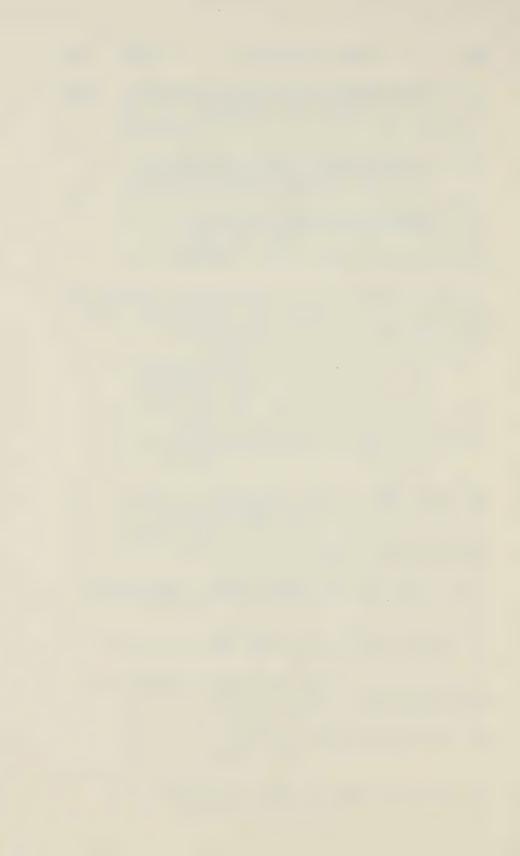
(1) Where a certificate endorsed or issued under this Act or where error in respect of a predecessor of this Act contains an error or where a certificate cate has been endorsed or issued on articles or any other documents that contain an error.

- (a) the corporation, its directors or shareholders may apply to the Director for a corrected certificate and shall surrender the certificate and related articles or documents: or
- (b) the corporation shall upon the request of the Director surrender the certificate and related articles or documents.

and, after giving the corporation an opportunity to be heard, where the Director is of the opinion that it is appropriate to so do and is satisfied that such steps have been taken by the corporation as the Director required, the Director shall endorse a corrected certificate.

24.—(1) This Act, except sections 18 and 23, comes into Commenceforce on a day to be named by proclamation of the Lieutenant Governor.

- (2) Sections 18 and 23 shall be deemed to have come into Idem force on the 29th day of July, 1983.
- 25. The short title of this Act is the Business Corporations Short title Amendment Act. 1986.





35 ELIZABETH II, 1986

Bill 66

(Chapter 57 Statutes of Ontario, 1986)

An Act to amend the Business Corporations Act, 1982

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading April 22nd, 1986

2nd Reading November 18th, 1986

3rd Reading November 27th, 1986

Royal Assent November 27th, 1986



Bill 66 1986

An Act to amend the **Business Corporations Act.** 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the Business Corporations Act, 1982, being chapter 4, is repealed and the following substituted therefor:
- **2.**—(1) This Act, except where it is otherwise expressly Application provided, applies to every body corporate with share capital,
 - (a) incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada:
 - (b) incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its registered office and carries on business in Ontario: or
 - (c) incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation within the meaning of the Loan and Trust Corporations Act except as pro- R.S.O. 1980, vided by that Act.

- (2) Notwithstanding The Railways Act, being chapter 331 of Idem the Revised Statutes of Ontario, 1950, and subject to subsection 167 (5), this Act applies to a body corporate with share capital that is a company as defined in that Act but that is not engaged in constructing or operating a railway, street railway or incline railway.
- (3) This Act does not apply to a body corporate with share Idem capital that,

R.S.O. 1980, c. 95 (a) is a company within the meaning of the *Corporations Act* and has objects in whole or in part of a social nature;

R.S.O. 1980, c. 91

- (b) is a corporation to which the *Co-operative Corporations Act* applies;
- (c) is a corporation that is an insurer within the meaning of subsection 141 (1) of the *Corporations Act*; or

R.S.O. 1980, c. 102

- (d) is a corporation to which the *Credit Unions and Caisses Populaires Act* applies.
- 2. Subsections 14 (1) and (4) of the said Act are repealed and the following substituted therefor:

Registered office

(1) A corporation shall at all times have a registered office in the municipality or geographic township within Ontario specified in its articles or in a special resolution made under subsection (4).

Change of registered office

(4) A corporation may by special resolution change the municipality or geographic township in which its registered office is located to another place in Ontario and, if it does so, shall file a certified copy of the resolution with the Director within ten days after passing the resolution.

Validity

- (5) Failure to file as set out in subsection (3) or (4) does not affect the validity of the resolution.
- 3. Subsections 25 (1), (4) and (5) of the said Act are repealed and the following substituted therefor:

Special shares in series

- (1) The articles, subject to the limitations set out in them,
 - (a) may authorize the issue of any class of shares in one or more series and may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series; and
 - (b) may, where the articles authorize the issue of any class of shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restric-

tions and conditions attaching to the shares of each series.

(4) Where, in respect of a series of shares, the directors Articles designating special shares shares of such series, the directors shall send to the Director articles of amendment in the prescribed form designating such series.

(5) On receipt of articles of amendment designating a series Certificate of shares under subsection (4), the Director shall endorse shares thereon, in accordance with section 272, a certificate which shall constitute the certificate of amendment.

- 4. Subsection 38 (1) of the said Act is repealed and the following substituted therefor:
- (1) Subject to its articles and any unanimous shareholder Declaration agreement, the directors may declare and a corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corpora-tion and, subject to subsection (3), a corporation may pay a dividend in money or property.

- 5.—(1) Clause 42 (2) (c) of the said Act is amended by inserting after "any" in the second line "prescribed class of" and by striking out "as a dealer" in the fifth and sixth lines.
- (2) Subsection 42 (3) of the said Act is repealed and the following substituted therefor:
- (3) Nothing in clause (2) (c) or (d) authorizes a corporation Application to impose restrictions on the issue, transfer or ownership of of subs. (2) shares of any class or series of which any shares are outstand- (c, d) ing unless,

- (a) in the case of restrictions in respect of a class, the shares of the class; or
- (b) in the case of restrictions in respect of a series, the shares of the series.

are already subject to restrictions for the purpose described in clause (2) (c) or (d).

(3) Clause 42 (4) (b) of the said Act is repealed and the following substituted therefor:

(b) prohibit the ownership of its shares,

6. Subsection 45 (1) of the said Act is repealed and the following substituted therefor:

Restricted shares held in contravention—sale by corporation

(1) A corporation that has restrictions on the issue, transfer or ownership of its shares of any class or series in order to assist the corporation or any of its affiliates or associates to qualify,

R.S.O. 1980, c. 466

- (a) under the *Securities Act* or similar legislation of a province or territory to obtain, hold or renew registration; or
- (b) for membership in a stock exchange in Ontario recognized as such by the Commission,

by reason of limiting to a specified level the ownership of its shares by any prescribed class of person or,

(c) under any prescribed Act of Canada or a province or ordinance of a territory to receive licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control,

may, for a purpose set out in clause (a), (b) or (c) or, in the case of a corporation under clause (c), for the purpose of attaining or maintaining a level of Canadian ownership or control specified in its articles, under such conditions and after giving such notice as may be prescribed, sell, as if it were the owner thereof, any of the restricted shares that are owned, or that the directors determine in such manner as may be prescribed may be owned, contrary to the restrictions.

- 7.—(1) Clauses 53 (1) (d), (f), (g), (n) and (u) of the said Act are repealed and the following substituted therefor:
 - (d) "bona fide purchaser" means a purchaser for value, in good faith and without notice of any adverse claim,
 - (i) who takes delivery of a security certificate in bearer form or order form or of a security certificate in registered form issued to him or endorsed to him or endorsed in blank,

- (ii) in whose name an uncertificated security is registered or recorded in records maintained by or on behalf of the issuer as a result of the issue or transfer of the security to him, or
- (iii) who is a transferee or pledgee as provided in section 85;
- (f) "clearing agency" means a person designated as a recognized clearing agency by the Commission;
- (g) "custodian" means a person acting as a custodian for a clearing agency;
- (n) "issuer" means a body corporate,
 - (i) that is required by this Act to maintain a securities register,
 - (ii) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests,
 - (iii) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (iv) that becomes responsible for or in place of any other person described as an issuer in this Part;

(u) "security" means a share, participation or other interest in property, rights or an enterprise of an issuer, or an obligation of an issuer, or any right to acquire such a share, participation, interest or obligation, of a type commonly dealt in upon securities exchanges or markets or commonly recognized as a

medium for investment in any area in which it is issued or dealt in:

- (ua) "security certificate" means an instrument in bearer, order or registered form, issued by an issuer evidencing a security.
- (2) Subsection 53 (1) of the said Act is amended by adding thereto the following clause:
 - (xa) "uncertificated security" means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of the issuer.
- 8. Subsection 56 (8) of the said Act is repealed and the following substituted therefor:

Notice of restrictions

- (8) Where the articles of a corporation restrict the issue, transfer or ownership of shares of any class or series for a purpose set out in clause 42 (2) (c) or (d), the restriction or a reference to it shall be noted conspicuously on every share certificate of the corporation evidencing a share that is subject to the restriction where the certificate is issued after the day on which the share becomes subject to the restriction under this Act and any reference to the restriction shall include a statement that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of the restriction.
- **9.**—(1) Subsection 85 (1) of the said Act is repealed and the following substituted therefor:

Transfer through clearing agency

- (1) If a security shown in the records of a clearing agency is evidenced by,
 - (a) a security certificate in the custody of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing agency or a custodian or of a nominee of either; or
 - (b) an uncertificated security registered or recorded in records maintained by or on behalf of the issuer in the name of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

- (2) Subsection 85 (5) of the said Act is repealed and the following substituted therefor:
- (5) A person depositing a security certificate or an uncertificated security with a clearing agency, or a transferee or pledgee of a security under this section, is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case may be, for all purposes, including, if a pledge or the creation of a security interest is intended, for the purposes of the Personal Property R.S.O. 1980, Security Act.

- (3) Subsection 85 (8) of the said Act is repealed and the following substituted therefor:
 - (8) In this section,

Definitions

- "issuer" includes a person, other than an individual, and a government or agency thereof,
 - (a) that is required by this Act to maintain a securities register,
 - (b) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests.
 - (c) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (d) that becomes responsible for or in place of any other person described as an issuer in this section; and
- "security", "security certificate" and "uncertificated security", in addition to the meaning each has for the purposes of Part VI, are extended to include a security, security certificate or uncertificated security, as the case may be, of an issuer within the meaning of this section.

- **10.** Subsection 96 (4) of the said Act is amended by striking out "subsection 111 (1)" in the fifth line and inserting in lieu thereof "section 111".
- 11. Section 125 of the said Act is amended by adding thereto the following subsections:

Articles amendment

(1a) Where a corporation has increased or decreased the number of directors by special by-law under a predecessor of this Act, the special by-law shall be deemed to constitute an amendment to its articles.

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Idem

- (2a) Where no resolution has been passed under subsection (2), the number of directors of the corporation shall be the number of directors named in its articles.
- **12.** Subsections 126 (4) and (6) of the said Act are repealed and the following substituted therefor:

Idem

(4) Where a corporation has fewer than three directors, all directors must be present at any meeting of directors to constitute a quorum.

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Transacting business

- (6) Directors, other than directors of a non-resident corporation, shall not transact business at a meeting of directors unless a majority of directors present are resident Canadians or, where a corporation has fewer than three directors, one of the directors present is a resident Canadian.
- 13. Clauses 138 (2) (c) and (d) of the said Act are repealed and the following substituted therefor:
 - a person is deemed to own beneficially, voting securities beneficially owned by a body corporate controlled by him directly or indirectly; and
 - (d) a body corporate is deemed to own beneficially, voting securities beneficially owned by its affiliates.
- 14. The said Act is amended by adding thereto the following section:

Resignation of auditor

149a. A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

- 15.—(1) Section 167 of the said Act is amended by adding thereto the following subsection:
- (1a) Where the directors are authorized by the articles to Idem divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide.
- (2) Subsection 167 (4) of the said Act is amended by inserting after "subsection" in the second line "(1a) or".
 - **16.** Subsection 181 (7) of the said Act is repealed.
- 17. Section 184 of the said Act is amended by adding thereto the following subsections:
- (6a) The execution or exercise of a proxy does not consti- Idem tute a written objection for purposes of subsection (6).
- (7a) A notice sent under subsection (7) shall set out the Idem rights of the dissenting shareholder and the procedures to be followed to exercise those rights.
- 18. Subsection 239 (1) of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:
- (1) Where sufficient cause is shown to the Director, not- Cancellation withstanding the imposition of any other penalty in respect of certificate. thereof and in addition to any rights he may have under this etc., by or any other Act, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any other certificate issued or endorsed under this Act or a predecessor of this Act, and,

- 19. Subsection 241 (1) of the said Act is amended by striking out "under section 238, 239 or 240" in the second line and inserting in lieu thereof "under this Act".
- 20. Clause 257 (1) (c) of the said Act is amended by striking out "subsection 111 (1)" in the fourth line and inserting in lieu thereof "section 111".
- 21. Section 269 of the said Act is amended by adding thereto the following subsection:

Privileged documents

- (3) Subsections (1) and (2) do not apply in respect of documents and financial statements required, by this Act or the regulations, to be filed with the Director with an application for exemption from the requirements of Part XII of this Act.
- 22. Paragraphs 6 and 25 of section 271 of the said Act are repealed and the following substituted therefor:
 - prescribing the form and content of information circulars and proxies required by Part VIII and the discretionary authority that may be conferred in proxies;

17a. prescribing that, for the purposes of Part XII of this Act, the standards, as they exist from time to time, of a prescribed accounting body shall be followed;

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- 25. prescribing, with respect to a corporation that has imposed restrictions on the issue, transfer or ownership of its shares for a purpose under subsection 42 (2),
 - i. the disclosure required of the restrictions in documents issued or published by the corporation,
 - ii. the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,
 - iii. the limitations on voting rights of any shares held contrary to the articles of the corporation, and
 - iv. the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the rights of the corporation and its directors, employees or agents to rely on the disclosure and the effects of the reliance;
- 25a. prescribing persons or classes of persons for the purpose of clause 42 (2) (c) and prescribing the

manner of computing the ownership of shares of a corporation by persons for such purpose;

- 27. prescribing classes of persons for the purposes of subparagraph ii of paragraph 37 of subsection 1 (1);
- 28. prescribing any matter referred to in this Act as prescribed by the regulations.

23. Subsection 273 (1) of the said Act is repealed and the following substituted therefor:

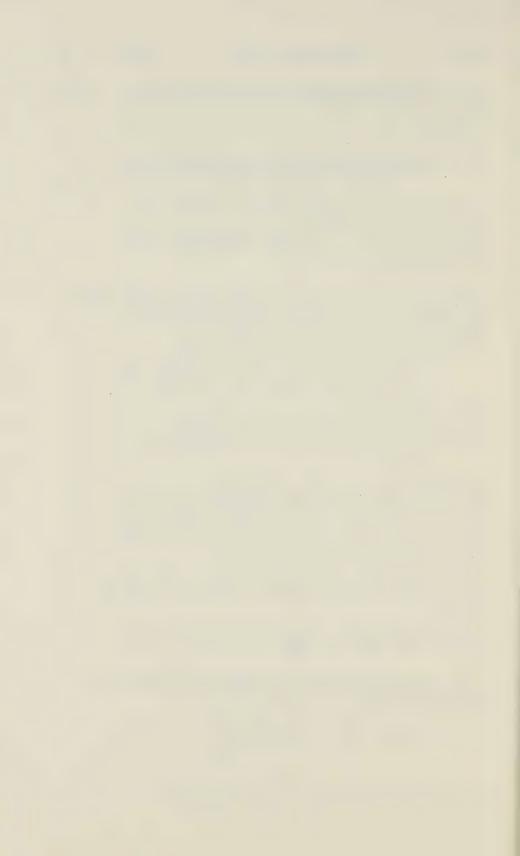
(1) Where a certificate endorsed or issued under this Act or a predecessor of this Act contains an error or where a certificate certificate cate has been endorsed or issued on articles or any other documents that contain an error.

- (a) the corporation, its directors or shareholders may apply to the Director for a corrected certificate and shall surrender the certificate and related articles or documents; or
- (b) the corporation shall upon the request of the Director surrender the certificate and related articles or documents.

and, after giving the corporation an opportunity to be heard, where the Director is of the opinion that it is appropriate to so do and is satisfied that such steps have been taken by the corporation as the Director required, the Director shall endorse a corrected certificate

24.—(1) This Act, except sections 18 and 23, comes into Commenceforce on a day to be named by proclamation of the Lieutenant Governor.

- (2) Sections 18 and 23 shall be deemed to have come into Idem force on the 29th day of July, 1983.
- 25. The short title of this Act is the Business Corporations Short title Amendment Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

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Bill 67

An Act to establish Midwifery as a Self-governing Health Profession

Mr. Cooke (Windsor-Riverside)



1st Reading

April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill is intended to establish midwifery as an independent, self-governing health profession along the lines of medicine and nursing.

Bill 67 1986

An Act to establish Midwifery as a Self-governing Health Profession

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART III-A

MIDWIFERY

67a.—(1) In this Part,

Interpretation

- (a) "by-laws" means the by-laws made under this Part;
- (b) "College" means the College of Midwives of Ontario;
- (c) "Council" means the Council of the College;
- (d) "licence" means a licence for the practice of midwifery issued under this Part;
- (e) "member" means a member of the College;
- (f) "practice of midwifery" means the supervision, care and counselling of women before, during and after pregnancy and labour, and includes,
 - (i) conducting normal deliveries independently,
 - (ii) caring for the newborn,
 - (iii) taking preventive measures,

- (iv) detecting abnormal conditions in mothers and the newborn,
- (v) obtaining medical assistance,
- (vi) taking emergency measures in the absence of medical assistance, and
- (vii) providing counselling and education to the community concerning health, preparation for birth and parenthood, family planning and child care;
- (g) "prescribed" means prescribed by the regulations or by-laws made under this Part;
- (h) "Registrar" means the Registrar of the College;
- (i) "regulations" means the regulations made under this Part.

Health discipline (2) The practice of midwifery is a health discipline to which this Part applies.

College of Midwives established **67b.**—(1) The College of Midwives of Ontario is established as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

Objects

- (2) The objects of the College are,
 - (a) to regulate the practice of midwifery and to govern its members in accordance with this Act, the regulations and the by-laws;
 - (b) to establish, maintain and develop standards of knowledge and skill among its members;
 - (c) to establish, maintain and develop standards of qualification and practice for the practice of midwifery;
 - (d) to establish, maintain and develop standards of professional ethics among its members;
 - (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;

such other objects relating to human health care as the Council considers desirable.

in order that the public interest may be served and protected.

67c.—(1) Every person licensed by the College is a mem-Membership ber of the College subject to any term, condition or limitation College to which the licence is subject.

(2) A member may resign his or her membership by filing a Resignation written resignation with the Registrar and the member's membership licence is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of the member's professional conduct while a member

(3) The Registrar may cancel a licence for non-payment of Cancellation any prescribed fee after giving the member at least two of fees months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of the member's professional conduct as a member.

67d.—(1) The Council of the College is established and Council of shall be the governing body and board of directors of the College and shall manage and administer its affairs.

the College

(2) The Council shall be composed of,

Composition

- (a) not fewer than eighteen and not more than twentyfive persons who are members and are elected by the members in the manner provided by the regulations; and
- (b) not fewer than six and not more than ten persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.
- (3) The appointment of every person appointed under sub- Expiration section (2) expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of the person's appointment, and a person whose appointment expires is eligible for reappointment.

- (4) Every member who is,
 - (a) resident in Ontario;

Qualifications to members

- (b) licensed to practise midwifery; and
- (c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

President and Vice-President (5) The Council shall elect annually a President and Vice-President from among its members.

Registrar and officers (6) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College.

Quorum

(7) A majority of the members of the Council constitutes a quorum.

Powers of Minister

- **67e.** In addition to the powers and duties conferred under Part I, the Minister may,
 - (a) review the activities of the Council;
 - (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
 - (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

- **67f.** Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,
 - (a) fixing the number of members to be elected to the Council and establishing electoral districts for elections:
 - (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
 - (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) requiring every member to file with the Registrar annually a plan for consultation with physicians licensed under Part III and for emergency care of the member's patients by a physician or physicians, and providing that a member's licence may be suspended for failure to file such a plan annually;
- (i) governing the designation of life members of the College and prescribing their rights and privileges;
- (j) prohibiting the practice of midwifery where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (k) defining professional misconduct for the purposes of this Part:
- (1) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (m) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (n) respecting the reporting and publication of decisions in disciplinary matters;
- (o) requiring and providing for the inspection and examination of books, accounts, reports and records of members in connection with their practice;

- (p) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (q) respecting the duties and authority of the Registrar;
- (r) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (s) prescribing forms and providing for their use;
- (t) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

By-laws

- **67g.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,
 - (a) prescribing the seal of the College;
 - (b) providing for the execution of documents by the College;
 - (c) respecting banking and finance;
 - (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
 - (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
 - (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
 - (g) respecting the calling, holding and conducting of meetings of the membership of the College;

- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business:
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the bylaw, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

(s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Idem

- (2) A copy of the by-laws made under subsection (1) and amendments thereto,
 - (a) shall be forwarded to the Minister;
 - (b) shall be forwarded to each member; and
 - (c) shall be available for public inspection in the office of the College.

Signing by-law and resolutions (3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for the purpose.

Licence to practise

67h.—(1) No person shall engage in the practice of midwifery, except in the provision of counselling and education referred to in subclause 67a (1) (f) (vii), or hold himself or herself out as engaging in the practice of midwifery, unless the person is licensed under this Part or under Part III.

Proof of practice

(2) For the purposes of this section, proof of the performance of one act in the practice of midwifery on one occasion is sufficient to establish engaging in the practice of midwifery.

Conflict with other health discipline (3) A member or person authorized by the regulations may engage in the practice of midwifery notwithstanding that any part of that practice is included in the practice of another health discipline.

Establishment of committees

- **67i.**—(1) The Council shall establish and appoint as hereinafter provided the following committees,
 - (a) Executive Committee;
 - (b) Registration Committee; and
 - (c) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

9

- **67j.**—(1) The Executive Committee shall be composed Executive of.
 - (a) the President, who shall be chairman of the Committee:
 - (b) the Vice-President: and
 - four members of the Council, two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council.
- (2) A majority of the members of the Executive Committee Quorum constitutes a quorum.
- (3) The Executive Committee shall perform such functions Duties of the Council as are delegated to it by the Council, the bylaws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.
- **67k.**—(1) The Registration Committee shall be composed Registration of.
 - (a) four members of the Council, two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council; and
 - (b) the President and Vice-President, ex officio.
- (2) The Council shall name one member of the Registration Chairman Committee to be chairman.
- (3) A majority of the members of the Registration Commit-Quorum tee constitutes a quorum.
- **671.**—(1) The Registrar shall issue a licence to any appli- Issuance cant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he or she proposes to refuse or to which he or she considers terms, conditions or limitations should be attached.

- (2) The Registration Committee,
 - (a) shall determine the eligibility of applicants for Committee licences and may require an applicant to take and

Powers and duties of Registration pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any licensing requirement.

Idem

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies

Review of qualifications (4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on the member's licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers of licences (5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise midwifery, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

Discipline Committee **67m.**—(1) The Discipline Committee shall be composed of ten members of the Council, four of whom shall be persons appointed to the Council by the Lieutenant Governor in Council.

Chairman

(2) The Council shall appoint one of the members of the Discipline Committee to be chairman.

Composition of panels

(3) The chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum and votes

(4) Three members of a panel assigned under subsection (3), one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

(5) Where a panel of the Discipline Committee commences Disability a hearing and the member of the panel who is appointed to or lay member the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding the member's absence.

67n.—(1) The Discipline Committee shall,

Duties of

- (a) consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, and take such action as it considers appropriate, including proceeding under clause (b) as if the complaint were an allegation of professional misconduct or incompetence;
- (b) hear and determine allegations of professional misconduct or incompetence against members,
 - (i) when so directed by the Council or Executive Committee, and
 - (ii) when the Discipline Committee considers it appropriate to deal with a complaint under this clause as if the complaint were an allegation of professional misconduct or incompetence:
- (c) hear and determine matters referred to it under section 67p;
- (d) hold hearings under section 670; and
- perform such other duties as are assigned to it by the Council.
- (2) No action shall be taken by the Committee under clause Idem (1) (a) unless,
 - (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he or she may wish to make concerning the matter; and
 - (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

- (3) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,
 - (a) consider the allegations, hear the evidence and ascertain the facts of the case;
 - (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
 - (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
 - (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

- (4) A member may be found guilty of professional misconduct by the Committee if,
 - (a) he or she has been found guilty of an offence relevant to suitability to practise, upon proof of the conviction; or
 - (b) he or she has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(5) The Discipline Committee may find a member to be incompetent if in its opinion the member has displayed in the professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates the member is unfit to continue in practice.

Powers of Discipline Committee

- (6) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,
 - (a) revoke the licence of the member:
 - (b) suspend the licence of the member for a stated period;
 - (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;

- reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund:
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates.

or any combination thereof.

(7) Where the Discipline Committee is of the opinion that Costs the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his or her costs or such portion thereof as the Discipline Committee fixes.

(8) Where the Discipline Committee revokes, suspends or Stay on restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(9) Where the Discipline Committee revokes, suspends or Stay on restricts the licence of a member on grounds other than for professional incompetence, the order shall not take effect until the time for misconduct appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

appeal for

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Service of decision of Discipline

(11) Where a proceeding is commenced before the Disci-Continuation pline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or membership is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

on expiry of Committee

- (a) "board of inquiry" means a board of inquiry appointed by the Executive Committee under subsection (2);
- (b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he or she no longer be permitted to practise or that the member's practice be restricted.

Reference to board of inquiry (2) Where the Registrar receives information leading him or her to believe that a member may be an incapacitated member, the Registrar shall make such inquiry as he or she considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination, the board may order that the member's licence be suspended until the member complies.

Hearing by Discipline Committee (4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Discipline Committee to hold a hearing and may suspend the member's licence until the determination of the question of the member's capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Discipline Committee are parties to a proceeding under this section.

Medical evidence (6) A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment, to be signed by the practitioner and served upon the other parties to the proceeding,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence.

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and crossexamine the medical practitioner on the contents of the report.

(7) The Discipline Committee shall, after the hearing,

Powers of Discipline Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke the member's licence.
 - (ii) suspend the member's licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.
- (8) The provisions of Part I and this Part applying to pro- Procedures ceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply with necessary modifications to proceedings of the Discipline Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

67p.—(1) A person whose licence has been revoked or Restoration suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Disci-Reference to pline Committee which shall hold a hearing respecting, and Discipline Committee decide upon, the application and the Discipline Committee

shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply with necessary modifications to proceedings of the Discipline Committee under this section.

Direction by Council to issue licence (4) Notwithstanding subsections (1), (2) and (3), the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Investigation of members

67q.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of the investigation to the Registrar.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980, c. 411

Obstruction

investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search warrant

(4) Where a justice of the peace is satisfied, upon an *ex* parte application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents

or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as the person calls upon to assist, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section Removal of may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

books, etc.

(6) Any copy made as provided in subsection (5) and certi- Admisfied to be a true copy by the person making the investigation of copies is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original book, record or document and its contents.

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he or she considers appropriate.

Report of Registrar

67r.—(1) Every person employed in the administration of Matters this Part, including any person making an inquiry or investigation under section 67q, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, inquiry or investigation under section 67q and shall not communicate any such matters to any other person except,

confidential

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or
- (b) to his or her counsel; or

(c) with the consent of the person to whom the information relates.

Testimony in civil suit (2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

Restraining orders

67s.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Penalties

67t.—(1) Every person who contravenes section 67h is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem, use of titles (2) Subject to the provisions of Parts II and V, any person not licensed under this Part or Part III who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he or she is licensed or registered under this Part or is recognized by law or otherwise as a midwife, or who assumes, uses or employs the description or title "midwife" or advertises or holds himself or herself out as such, is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 67t in the course of his or her duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

Commence-

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the Health Disciplines Amendment Act, 1986.



